Public Body Procurement Workgroup

Report of the Public Body Procurement Workgroup on Changes to the Information Technology Access Act to Further Digital Accessibility

October 2024

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I. Introduction

The Public Body Procurement Workgroup (Workgroup) was tasked with studying HB 1355, patroned by The Honorable Kathy K. L. Tran during the 2024 General Assembly session. HB 1355 aims to make numerous organizational changes to the Information Technology Access Act to increase digital accessibility.

In response to this directive, stakeholders were identified, and five Workgroup meetings were held at which HB 1355 was discussed. This report summarizes the information presented to the Workgroup by stakeholders and subject matter experts and the Workgroup's findings and recommendations.

II. Background

Overview of Public Body Procurement Workgroup Authority and Duties

Item 85 of the 2022 Appropriations Act directs DGS to lead, provide administrative support, and convene an annual public body procurement workgroup to review and study proposed changes to the Code of Virginia in the areas of non-technology goods and services, technology goods and services, construction, transportation, and professional services procurements. The Appropriations Act language specifies that that Workgroup's membership shall be composed of the following individuals or their designees:

- Director of the Department of Small Business and Supplier Diversity
- Director of the Department of General Services
- Chief Information Officer of the Virginia Information Technologies Agency
- Commissioner of the Virginia Department of Transportation
- Director of the Department of Planning and Budget
- President of the Virginia Association of State Colleges and University Purchasing Professionals
- President of the Virginia Association of Governmental Procurement

Additionally, the Appropriations Act language requires that a representative from each of the following provide technical assistance to the Workgroup:

- Office of the Attorney General's Government Operations and Transactions Division
- Staff of the House Appropriations Committee
- Staff of the Senate Committee on Finance and Appropriations
- Divisions of Legislative Services

The Appropriations Act language outlines a few avenues by which bills may be referred to the Workgroup for study. First, the Chairs of the House Committees on Rules, General Laws, and Appropriations, as well as the Senate Committees on Rules, General Laws and Technology, and Finance and Appropriations, can refer legislation by letter to the Workgroup for study. This is how HB 1355 was referred. Second, the Chairs of the House Committees on Rules and Appropriations, as well as the Senate Committees on Rules and Finance and Appropriations, can

request that the Workgroup review procurement-related proposals in advance of an upcoming legislative session to assist in obtaining a better understanding of the legislation's potential impacts. Additionally, bills may also be referred to the Workgroup for study by the General Assembly, which can pass a bill that includes an enactment clause directing the Workgroup to study a particular topic.

Overview of HB 1355

As introduced, HB 1355 sought to make numerous organizational changes to the Information Technology Access Act to increase digital accessibility to cover all disabilities for citizens of the Commonwealth of Virginia. HB 1355 expands the covered entities to include K-12 schools and requires the Secretary of Administration to create an information and communication technology access clause that would require vendors to produce an accessibility conformance report. The ITAA currently requires an annual report which HB 1355 would eliminate. HB 1355 states that if a vendor cannot meet the accessibility requirements within 12 months, then the vendor may be required to refund the agency, or the contract can be canceled. The bill permits state agencies, public institutions of higher education, school divisions and political subdivisions of the commonwealth each to designate an employee to serve as a digital accessibility coordinator to develop and implement a digital accessibility policy.

The bill, which was patroned by the Honorable Delegate Kathy K. L. Tran passed through the House of Delegates with amendments and was referred to the Committee on General Laws and Technology in the Virginia Senate where it will be continued to the 2025 Session. The Honorable Senator Adam P. Ebbin, Chair of Senate General Laws and Technology, directed the Department of General Services (DGS) Public Body Procurement Workgroup to study HB 1355 and develop recommendations for updating the ITAA, after seeking input from various groups with a vested interest in the bill.

Study Participants Stakeholders

The Workgroup's Appropriations Act language directs it to hear from stakeholders identified by the patron of referred legislation and other interested individuals. As such, the Workgroup's staff contacted Delegate Tran to solicit input regarding stakeholders she would like included in the Workgroup's review of HB 1355. The Workgroup's staff compiled the names of the stakeholders identified into a stakeholder email distribution list, which it used to communicate information about the Workgroup's study of HB 1355 and opportunities for public comment to the identified stakeholders. The Workgroup's staff also added any interested individual to the stakeholder email distribution list upon request by such individual.

The stakeholder email distribution list was composed of the following individuals:

- The Honorable Kathy K. L. Tran—Virginia House of Delegates
- Kara N. Alley—Spotts Fain Consulting, Government Affairs Specialist
- Darren Hays, II—Spotts Fain Consulting, Government Affairs Assistant
- Korey Singleton—George Mason University, ATI Manager
- Tracy Soforenko—National Federation of the Blind Board, President

- Colleen Miller—Disability Law Center of Virginia, Executive Director
- Tonya Milling—The Arc of Virginia, Executive Director
- Teri Morgan—Virginia Board for People with Disabilities, Executive Director
- Josette Bulova—Virginia Municipal League, Policy Communications Coordinator
- Chris Whyte—The Vectre Corporation, Government Affairs Manager
- Susan Davis—Virginia Department for the Blind and Vision Impaired, ADA Coordinator
- Jeremy R. Bennett—Virginia Association of Counties, Director of Intergovernmental Affairs
- Timothy Wyatt—York County, Director of Information Technologies
- Scott Brabrand—Virginia Association of School Superintendents, Executive Director

III.   Workgroup Meetings on HB 1355

The Workgroup held five meetings during which it discussed HB 1355. At its July 17 meeting, Workgroup staff introduced HB 1355 and shared that the bill was patroned by Delegate Tran. Delegate Tran then gave remarks about the bill and an overview of the ITAA. Two stakeholders, Bonnie O'Day, Legislative Chair for the National Federation of the Blind of Virginia, and Christine Neuber, an IT accessibility coordinator representing the Virginia Higher Education Accessibility Partners (VHEAP), spoke in favor of the bill. Two more stakeholders, Gerrit VanVoorhees with Virginia Local Government Information Technology Executives, and Clifford Shore, vice president of the Virginia Association of State College and University Purchasing Professionals and chief procurement officer for George Mason University, spoke in support in part of HB 1355. The Workgroup discussed the bill, saying they would like to hear from more stakeholders (specifically more K-12 stakeholders), they wanted more information on incorporating ADA, and some data on what other states are doing.

During the August 6, 2024, Workgroup meeting there were two presentations on HB 1355. The first presenter was Josh Jones from Virginia Information Technologies Agency (VITA), who provided an overview of the website modernization program, and how VITA is incorporating accessibility into this program. The second presenter was Daniel Aunspach with the Department for the Blind and Vision Impaired. He shared challenges, caveating that VITA has addressed some of the challenges with their website modernization, and shared strategies to overcome accessibility challenges. During public comment on HB 1355 two people spoke in support of the bill—O'Day with National Federation of the blind of Virginia and Corey Singleton with Virginia Higher Education Accessibility Partners. Seven stakeholders spoke in opposition to the bill, saying that they were not opposed conceptually, but had various concerns with the cost and implementation of it: Chris Carey with Metis Services Inc., Tim Wyatt with the Virginia Local Government Information Technology Executives, JT Kessler with the Virginia School Boards Association, Jeremy Bennett with Virginia Association of Counties, Scott Brabrand with Virginia Association of School Superintendents, Josette Bulova, and Jennifer Van Ee. The Workgroup then discussed the bill and Saunders asked for more information around compliance with Title II of the ADA and what is considered digital content.

At the next meeting, held on August 21, 2024, the Workgroup received a presentation from Nathan Moberley of the Office of the Attorney General (OAG) on concern around the definition of accessibility. There were three stakeholders in support of HB 1355: Barbara Sunder representing VHEAP, Teri Morgan with the Virginia Board for People with Disabilities, and Ann Flippin with the Autism Society of Central Virginia. There were no stakeholders in opposition at this meeting. In the Workgroup's discussion on HB 1355 at this meeting, they talked about possible recommendations and staff was asked for formalize the recommendations for the next meeting.

At the meeting, held on September 4, 2024, staff read six drafted recommendations to the Workgroup, but the Workgroup abstained from voting at the request of Delegate Tran who could not make the meeting. The Workgroup asked to break the final recommendation into two and agreed to vote on the seven recommendations at the next meeting.

At the September 17 meeting, Delegate Tran gave remarks on HB 1355, thanking the Workgroup for their work on drafting recommendations and sharing her thoughts on the recommendations. After she spoke, the Workgroup voted in support of each of the seven recommendations.

See Appendices B, C, D, E and F for the meeting materials, including meeting minutes for each of the five meetings.

IV.   Summary of Information Presented to the Workgroup

The Workgroup was directed to review HB 1355 patroned by Delegate Tran which seeks to make numerous organizational changes to the Information Technology Access Act to increase digital accessibility to cover all disabilities for citizens of the Commonwealth of Virginia. The Workgroup was tasked with reporting its findings to the General Assembly by November 1, 2024. Below is a summary of the testimony and presentations that the Workgroup received pertaining to this task.

July 17, 2024, testimony in support of HB 1355

At the first Workgroup meeting on July 17, 2024, Delegate Tran provided remarks on HB 1355, highlighting her involvement in addressing accessibility challenges since 2021. She shared the story of a constituent whose son struggled with inaccessible web-based math applications in school, which led to his withdrawal from public school due to unmet needs. HB 1355 aims to modernize the Information Technology Accessibility Act (ITAA) to ensure accessibility for K-12 schools and state government.

Delegate Tran explained that the ITAA, first enacted in 1999, mandates state agencies and local governments ensure that technology is visually accessible. However, current law allows for certain cost-related exemptions. HB 1355 seeks to expand the scope of the ITAA to cover all disabilities, not just visual impairments, using hearing disabilities as an example. It also broadens the range of covered entities to include K-12 schools and requires vendors to submit accessibility conformance reports.

Additionally, she said HB 1355 would eliminate the current requirement for an annual report and create provisions for vendors who cannot meet accessibility requirements, potentially requiring refunds or contract cancellations. The bill also allows for the designation of a digital accessibility coordinator within state agencies and includes exemptions for localities with populations under 50,000.

Delegate Tran emphasized that compliance would become a shared responsibility between entities and vendors, with many already moving towards accessible technology. She highlighted that funding has been approved in the state budget to support language access and accessibility for individuals with disabilities. Finally, she acknowledged the Workgroup's efforts and encouraged collaboration with disability advocacy organizations.

Bonnie O'Day, Legislative Chair for the National Federation of the Blind of Virginia, provided testimony in support of HB 1355, emphasizing that the bill modernizes the Information Technology Accessibility Act (ITAA) by outlining procedural steps for government to ensure the purchase of accessible technology for people with disabilities. While progress has been made, O'Day noted that many government agencies and higher education institutions are still purchasing inaccessible technology, failing to comply with federal guidelines.

She referenced new federal regulations from the Department of Justice (DOJ) under Title II of the Americans with Disabilities Act (ADA), which set compliance timelines for web content and mobile applications provided by state and local governments, without exemptions for localities under 50,000 people. O'Day pointed out that Virginia's schools, counties, and municipalities are not meeting their obligations under the older regulations, negatively impacting students, employees, and the general public in accessing education, employment, and civic participation.

She raised concerns about state and local governments' ability to comply with both old and new regulations, noting that HB 1355 aims to shift the responsibility of proving accessibility compliance to software vendors. O'Day questioned why localities are claiming implementation costs exceeding one million dollars when they should have already been in compliance for years. She concluded by stressing the need to integrate accessibility into technology purchasing decisions.

In response to a question about how HB 1355 differs from federal law, O'Day and Delegate Tran clarified that while federal law does not exempt smaller localities, it provides more time for compliance, which the bill also considers.

Christine Neuber, an IT accessibility coordinator representing the Virginia Higher Education Accessibility Partners (VHEAP), testified on the challenges of ensuring IT accessibility, particularly the lack of fully accessible software available in the market. She explained that compliance with federal standards and other requirements has been difficult due to limited accessible options. Neuber emphasized that HB 1355 helps by shifting the responsibility to vendors to prioritize accessibility, which will provide more accessible technology options.

Neuber highlighted the importance of collaboration across universities and agencies to ensure consistent standards and meet the needs of students, including those in K-12 education. She stressed the need for agencies to hold vendors to the same accessibility standards, noting that vendors often claim they haven't been asked by other agencies to provide the accessibility features she requests. She concluded that consistency in demands across agencies would improve the situation for both vendors and agencies.

July 17, 2024, testimony in support or oppose in part of HB 1355

Gerrit VanVoorhees, representing the Virginia Local Government Information Technology Executives (VaLGITE), expressed concerns about HB 1355 on behalf of the organization, which represents 83 percent of localities in Virginia with populations over 2,000. While he supports broadening accessibility, he believes that the bill, as written, could negatively impact access to services.

In February, VaLGITE sent a letter to the PWG outlining three main concerns: (i) overly broad definitions, particularly for digital accessibility and information and communications technology, (ii) duplication of existing federal standards, such as ADA and Section 508 of the Rehabilitation Act, and (iii) insufficient funding to implement the necessary changes.

VanVoorhees elaborated on these issues, highlighting that the bill's definition of digital accessibility encompasses a wide range of technologies, including electronic documents, websites, hardware, and kiosks, and requires compatibility with assistive technologies like screen readers and braille displays. He also warned that the bill might lead to a halt in technology modernization efforts if localities are unable to comply.

Clifford Shore, Vice President of the Virginia Association of State College and University Purchasing Professionals (VASCUPP) and Chief Procurement Officer for George Mason University, expressed partial support for updating the ITAA to align with federal Section 508 requirements. He suggested changes to HB 1355 to reduce fiscal impacts on agencies.

Shore proposed removing mandatory penalties for vendors failing to comply within 12 months, noting that most contracts, including those at GMU, don't include specific penalties for individual clauses, which are instead governed by breach of contract remedies. He argued that the bill's penalty language might deter vendor agreement.

Shore also recommended: (i) removing penalty clauses and not placing procurement in charge of enforcing penalties, (ii) incorporating existing federal 508 law exemptions, and (iii) prioritizing accessibility requirements for public-facing software, especially where students are concerned. He concluded by noting that much of GMU's software is not public facing, so prioritizing accessibility where it matters most would be beneficial.

August 8, 2024, presentation on VITA website modernization

Josh Jones from the Virginia Information Technologies Agency (VITA) presented an overview of the agency's website modernization program, which began in 2023. The program's goals are to enhance security, design, and accessibility across all agency websites. Initially, only 44 percent of websites met accessibility standards, but after new training and resources were provided, compliance rose to over 88 percent. VITA has collaborated with both executive and non-executive agencies, offering monthly and on-demand accessibility training for web developers.

Jones highlighted VITA's use of tools and vendor partnerships, including the custom Accessible Virginia training program. He emphasized that VITA is working to ensure websites meet WCAG 2.1 Level AA accessibility guidelines, required by the ADA for areas with populations over 50,000 by April 2026 (and an additional year for smaller areas). However, he noted that making web applications accessible often requires rebuilding them, with costs ranging from $50,000 to $250,000.

Jones concluded by discussing concerns about the cost of implementing accessibility measures, explaining that while there has been strong cooperation, many agencies lack the resources to address accessibility issues. For FY25, VITA has requested funding to continue supporting website modernization and procurement efforts.

August 8, 2024, presentation on procurement challenges

Daniel Aunspach from the Department for the Blind and Vision Impaired discussed challenges in procurement, particularly related to accessibility. He noted that many issues have been addressed through cooperation with VITA and other partners, but challenges remain. These include the rapid evolution of technology, vendors' limited accessibility knowledge, and the use of subcontractors. Aunspach highlighted that some products may not be practically usable for people with disabilities, even if they meet technical standards, and that accessibility is often overlooked if a resource is not for public use or if current users don't have disabilities, excluding potential team members with disabilities.

He stressed the importance of incorporating accessibility throughout the software lifecycle and all business operations to ensure broader adoption and continuity. Aunspach warned that "alternate but equal" solutions can be misleading, as providing an alternate format might reduce accessibility and productivity, citing the example of converting an accessible PDF into a less navigable Word document.

To address these challenges, Aunspach suggested ongoing training, leveraging self-service resources from assistive technology producers, and using free online tools and guidance. He concluded by emphasizing the need to include accessibility in the procurement process and throughout software development, with testing by end users relying on accessibility tools to identify improvements.

August 8, 2024, testimony in support of HB 1355

Bonnie O'Day from the National Federation of the Blind of Virginia (NFBV) expressed appreciation for the workgroup's efforts and suggested updating HB 1355 to align with federal ADA regulations. She recommended revising the definitions of accessibility and accessibility conformance reports to refer to the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, which would harmonize the ITAA with ADA Title II regulations. O'Day emphasized the need to eliminate confusion between various laws (Section 508, 504, ADA, ITAA) and ensure access requirements are consistent with Title II. She noted that aligning with federal law would streamline processes and reduce redundancy for covered entities. O'Day also suggested designating a contact person for accessibility issues, particularly for state websites, as she has encountered more problems with local governments and higher education. She concluded by stressing the importance of vendors documenting their compliance with accessibility standards.

Corey Singleton, representing the Virginia Higher Education Accessibility Partners (VHEAP), highlighted that of Virginia's 68 public higher education institutions, only about five currently review accessibility during procurement. He noted that inaccessible technology is frequently purchased, affecting students and employees with disabilities, extending beyond websites to systems like learning management platforms.

Singleton emphasized the need for better collaboration, such as utilizing cooperative purchasing agreements for services like captioning and braille. He expressed concern that most institutions are not prepared to meet the updated ADA Title II accessibility requirements within the two-year compliance timeline, due to a lack of staff and resources. He mentioned that fewer than ten higher education institutions have dedicated staff for accessibility.

He also stressed the importance of a collaborative procurement approach to avoid redundant efforts and ensure transparency from vendors about accessibility gaps. Singleton concluded by advocating for vendors to provide timelines for making products accessible and for institutions to create alternative accessibility plans when needed.

August 8, 2024, testimony about cost of implementing HB 1355

Chris Carey, representing Metis Services Inc., explained that his company provides risk management services to local governments and schools in Virginia. He expressed no opposition to the bill but noted that complying with it could be costly for the 1,000 local governments and K-12 school districts in Virginia. Carey estimated that updates and new websites could cost between $50,000 and $250,000 each over the next 36 months. He highlighted that Title II of the ADA already requires conformance to accessibility standards, and any requirements beyond that would further increase costs. He also mentioned that local governments are dealing with staff shortages and rising salaries, making this likely an unfunded mandate. Carey concluded by agreeing that Virginia should comply with ADA Title II standards.

The second stakeholder to speak was Tim Wyatt with the Virginia Local Government Information Technology Executives (VaLGITE). He shared that most all VaLGITE supports the concept of this bill and that the challenge is on the wording and how it will be implemented. Wyatt explained that in his local government there are over three-hundred pieces of software and trying to assess this all with limited resources is not doable in a short amount of time. He

concurred with the costs that Carey shared and stressed that each locality uses different programs.

The third stakeholder to speak was JT Kessler with the Virginia School Boards Association. Kessler echoed the comments of previous two speakers emphasizing the concerns around cost and implementation. He added that he does not see a need for Virginia to implement requirements beyond those the federal government require at this time. Kessler stated that schools are required to comply with serving the needs of students through 504 plan or IEP.

The fourth stakeholder to speak was Jeremy Bennett representing the Virginia Association of Counties (VACo). Bennett stated that they are not opposed to the intent of the bill but have concerns regarding implementation and the potential for unfunded mandates for local governments. He encouraged members to look at fiscal impact from session on the bill stating that the fiscal impact will be anywhere from thousands to millions of dollars for local governments.

Peeks asked Bennett and the other presenters who spoke in opposition, if they have recommendations on how to accommodate the costs of implementation. Carey responded that the minimum cost for a website is between $50,000 and $250,000, and that everyone will have to incur these costs to be compliant with the standard and the fear is that Virginia will add additional requirements on top of the Title II of the ADA requirements, making it even more complicated and expensive. Carey added that schools do not receive money to implement these new requirements and suggested that Virginia conform to Title II of the ADA and once those changes are implemented, Virginia can determine if there are any gaps that need to be addressed. Saunders addressed the fiscal impact issued during session, stating that the new federal standard was finalized after session, and we need to consider the cost to public bodies for implementing the new standards.

The fifth stakeholder, Scott Brabrand, Executive Director of the Virginia Association of School Superintendents, representing 132 school divisions, proposed three potential solutions to the Workgroup: (i) have the Virginia Department of Education (VDOE) post a list of vendors that meet accessibility standards to guide school divisions, (ii) address unfunded mandates by first funding the implementation of existing federal regulations, then identifying and funding any additional gaps specific to Virginia, and (iii) ask JLARC to assess digital accessibility and provide a roadmap for school divisions to meet the requirements.

The sixth stakeholder to speak was Josette Bulova with the Virginia Municipal League (VML) and echoed previous comments regarding cost and implementation for equipment, employees, potential litigation, specifically for smaller localities with budgets smaller than the cost of new equipment.

The seventh stakeholder to speak was Jennifer Van Ee with Fairfax County. Van Ee echoed prior comments sharing that Fairfax County is already in compliance with Title II. She explained that this effort has been a priority, and the county has invested a lot of money into this effort. Van Ee stated that there are three levels of compliance, and this bill would push everyone to meet the highest level which will cost a lot of money and go beyond the current ADA

compliance requirements. She noted the broad language in the bill and the challenge to know exactly how to implement and exactly what all will be impacted.

The Workgroup received a presentation from Nathan Moberley of the Office of the Attorney General (OAG). Moberley shared that the primary concern is ambiguity with respect to the definition of accessibility. He explained that the bill defines accessibility as alignment with federal Section 508 Standards and Section 255 Guidelines adopted pursuant to 29 U.S.C. § 794d and 47 U.S.C. § 255. Moberley explained that the two statutes implement two different standards to accommodate disabilities, and both are potentially in conflict with one another. Referencing both could make it difficult for covered entities to interpret the standards that apply to them.

August 21, 2024, testimony in support of HB 1355

The first stakeholder to comment was Barbara Sunder with the University of Virginia (UVA), representing VHEAP. Sunder shared with the Workgroup that she works with students with disabilities daily and supports HB 1355. She stated that everyone will be impacted by the Title II ADA update and shared that the bill does two things that Title II does not. First, it addresses outdated state code that has not kept up with the changing technology world. Second, it provides structure and outlines a plan for how public entities can begin the uphill battle towards compliance. She explained that Title II sets the mandate but falls short on providing concrete guidance on how to achieve these goals. HB 1355 gives public entities a framework and allows pushback to vendors who fall short on accessibility.

The second stakeholder to comment was Teri Morgan with the Virginia Board for People with Disabilities. Morgan expressed support for HB 1355, adding that the new ADA rules go into effect April 2026, which gives the opportunity to create a framework for agencies and organizations to demonstrate that Virginia understands the importance of accessibility for all.

The third stakeholder to comment was Ann Flippin with the Autism Society of Central Virginia. Flippin shared that there are gaps and expressed the importance of the bill for their community and ensure that Virginia has accessible technology for all.

September 17, 2024, Delegate Tran Remarks

The Honorable Delegate Kathy Tran spoke to her patron bill, HB 1355. She expressed her sincere appreciation to the Workgroup for the time and attention they have given HB 1355 and emphasized the importance of increasing access to government services and educational programs to all Virginia citizens. She stated she believes the recommendations the Workgroup have made will help make progress for individuals with disabilities, working towards the day when every Virginian is able to access resources and services available to them. She then shared thoughts on the Workgroup's drafted recommendations. She said on Recommendation 1, the new WCAG version 2.1AA was not released until after the 2024 Legislative Session adjourned, so she very much appreciated the time that the Workgroup took to assess those new federal

regulations and how they will affect Virginia. She stated that she agreed with the Workgroup that the new ADA Title 2 standards should be incorporated as well.

On Recommendation 2, she thanked the Workgroup for specifically recommending that the General Assembly add local school districts as a covered entity, because, she said, it will help ensure students with disabilities are able to fully participate in their classrooms. She added it will reduce the time teachers have to devote to making separate lesson plans for children with disabilities.

For Recommendation 6, Tran said she accepted it but focused her attention to the inclusion of Recommendation 5, which she said is important, as well as a feedback loop so that the public and covered entities can work together to address inaccessible technologies that remain. Tran added that Recommendation 5 would augment that collaboration. Tran mentioned an Accessibility Conformance Report that was not in the Workgroup's recommendations, saying she hopes the General Assembly and the Workgroup will recognize this report is integral to the bill because it gives a roadmap to compliance. Lastly, she suggested that higher education entities be included in the same implementation timeline as state governments. She said in her conversations with higher education, they relayed that's the timeline they were looking at nationally as well. She then thanked the Workgroup once more for their efforts.

Workgroup Findings and Recommendations

At the Workgroup's third meeting on August 21, 2024, the Workgroup began a discussion based on the input they had received regarding HB 1355. Saunders commented that a recommendation could be made to conform the state law to Title II of the ADA requirements for now, and after the implementation of Title II of the ADA in April 2026, the General Assembly could determine if additional changes are needed to Virginia's accessibility standards. Innocenti and Gill both expressed support for the recommendation. Peeks requested that the recommendation include the same entities that are required to adhere to the Title II of the ADA.

Innocenti stated that when bringing the state into compliance with the federal requirements, it would be helpful to determine the priority of compliance and if first the outward facing systems and applications should be addressed. Peeks sought clarification as to whether outward facing systems would include systems used by students, to which Innocenti confirmed that students would be included. Gill asked if the federal government defines outward facing systems.

Gill asked the Workgroup to consider a recommendation to change the reporting requirements, which currently requires reporting to the Secretary of Administration (SOA), because stakeholders have indicated that the reporting is not being done. She recommended reporting go to the General Assembly instead of the SOA and that the reporting requirements be expanded to include noncompliant websites and fiscal impact to obtain compliance. Heslinga added that expanding the reporting in that way will make it more impactful as the current reporting pertains only to instances where the accessibility clause is excluded. Dulaney asked who would be responsible for the reporting, to which Gill responded with an example for consideration that SCHEV could report for Higher Education, DOE for local public schools, etc.

Saunders replied that it would be good to have an entity be responsible for facilitating the reporting instead of having each covered entity submit individual reports.

Innocenti recommended that lines 131-141 of the bill should be removed to not incorporate consequences as the procurement process provides the commonwealth the authority to address any nonperformance issues that may arise. Peeks clarified that it is not being removed entirely as it exists elsewhere, it's being removed because the procurement process allows contractors to be held responsible, and, if in breach of contract, the commonwealth can debar.

Heslinga recommended that the parts of the bill that designate an accessibility coordinator and the grievance procedure be addressed. He shared that most organizations have a designated person to handle ADA matters, and in the engrossed bill, it is not specific about making the accessibility coordinator contact information easily available and is permissive about designating an accessibility coordinator, then on lines 183 a grievance procedure is incorporated. Heslinga stated that the accessibility coordinator information should be easy to identify and readily available, however the surrounding language regarding the grievance procedure should be removed. Tweedy added that it would be helpful to clarify that when contacting the accessibility coordinator that the barrier to accessibility be provided.

Peeks added that once the general alignment with the federal regulations is made, it would be helpful to know the additional requirements in the bill that do not align with the federal requirements.

Innocenti pointed out to the Workgroup that OAG identified issues with the bill using acquisition and procurement interchangeably and the Workgroup may wish to address that.

Gill did a review of the recommendations the Workgroup offered and directed staff to compile into formal recommendations for review at the next meeting.

At its fourth meeting, on September 4, 2024, Gill stated that the recommendations for HB 1355 would be finalized today, but that the vote would occur at the following meeting, at Delegate Tran's request. Workgroup staff member Jessica Hendrickson then read the recommendations aloud beginning with draft Recommendation 1: "The Workgroup recommends that General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with Title 2 of the American with Disabilities Act for all covered entities and that after the federal deadline of April 2026 to comply with the federal standards then the General Assembly should determine if additional requirements should be added to the code." Gill asked Schultz, with the Division of Legislative Services, to opine on Recommendation 1, asking if it would be appropriate for the recommendation to say not just following Title 2 of the American Disabilities Act, but also including the Code of Federal Regulations and the Federal Rehabilitation Act as appropriate. Shultz confirmed that would be acceptable.

Saunders stated the regulations that have come out from the Department of Justice came through the federal registrar and are not specifically from Tittle 2. He then asked if the Workgroup needed to reference the CFR in the recommendation so that the bill is in compliance with the most recent regulations. Gill concurred. Heslinga asked if the Workgroup wanted to

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reference specific regulations or if the Workgroup should use less specific language such as "in compliance with applicable law, including Title 2 of the American Disabilities Act and associated regulations." Gill concurred but said they will come back to this point once the Legislative Services member returns.

Hendrickson read Recommendation 2, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of 2.2 to add public schools to the definition of public entity." Saunders asked a clarifying question of if the DOJ regulations include school divisions under those regulations as a covered entity. When hearing yes, he asked for confirmation that the Workgroup's recommendation would be consistent with amending state statute as we set in Recommendation 1." Gill replied that he was correct.

Hendrickson then read Recommendation 3, "The Workgroup recommends that General Assembly consider amending Chapter 35 of Title 2.2 to prioritize outward facing systems and applications." Heslinga poised a question to Workgroup Chair Gill, asking if the recommendation should be more general and about guidance rather than a specific amendment to the statute because he does not think anyone is questioning that the biggest impacts would be prioritized first. He continued that consistency with federal law is important and asked if the Workgroup were to add a prioritization that is not consistent with federal law if that introduced an inconsistency. He suggested the recommendation say, "The General Assembly charge stakeholder agencies with providing guidance about how to prioritize systems and applications." Peaks seconded Heslinga's suggested change, adding that it could be the General Assembly's preference and that she liked the idea of a creation of a policy. Dulaney asked if the Workgroup should consider any type of an exemption or under $10,000 threshold for prioritizing in Recommendation 3. Saunders asked if the federal law requires a dollar threshold. Gill said that she did not think there was a threshold in the federal law and said she did not think they should include one in this recommendation but deferred to the Workgroup. Heslinga suggested that a dollar amount could be dealt with in a policy. Tweedy added that it could clarify in the recommendation that the policies would be consistent with federal law and regulations.

Hendrickson read Recommendation 4, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expand the reporting requirements by covered entities on non-accessible technology to include 1. identifying non accessible technology, and 2. estimating the fiscal impact of bringing such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agencies such information on an annual basis and that agencies report to the General Assembly rather than the Secretary of Administration. And it provides an example of local public schools to the Department of Education."

Hendrickson read Recommendation 5, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require that covered entities publish in a clear, easily accessible area on their website who should be contacted when an accessibility barrier is identified. Peaks asked if it were possible to have a policy where agencies were required to respond or have a process to respond to the contact. She shared drafted language for the recommendation, "And that agencies develop an internal process to expediently seek remedy to the identified concern." Gill said it would be incorporated into the recommendation.

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Hendrickson then read Recommendation 6, "The Workgroup recommends that when amending Chapter 35 Title 2.2, the General Assembly not include the following the grievance procedure language which is found in lines 183 to 189 that is found in the engrossed version of the bill because other federal and state laws already provide procedures for remedies or 2, specific contractual penalty or consequence language like found in lines 133-141 of the engrossed bill because public bodies already have the authority to address noncompliance with law or with contract provisions." Heslinga asked the Workgroup if procedurally that recommendation should be separated into two recommendations. The Workgroup agreed to draft them into two recommendations.

Gill asked Workgroup staff member Killeen Wells to read each recommendation aloud, after which the Workgroup would vote on each recommendation.

Recommendation 1: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with the Americans with Disabilities Act (ADA), the Code of Federal Regulations and the Federal Rehabilitation Act as appropriate for all covered entities and 2 that, after the federal deadline of April 2026 to comply with the federal standards, then the General Assembly should determine if additional requirements should be added to the Code." The Workgroup voted in support of Recommendation 1 of HB 1355, 7-0.

Recommendation 2: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to add public schools to the definition of covered entity." The Workgroup voted in support of Recommendation 2 of HB 1355, 7-0.

Recommendation 3: "The Workgroup recommends that the General Assembly charge stakeholder agencies with providing guidance on how to prioritize systems and applications." The Workgroup voted in support of Recommendation 3, 6-0, with DPB abstaining.

Recommendation 4: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expanding the reporting requirements by covered entities on non-accessible technology to include: (i) identifying non-accessible technology, and (ii) estimating the fiscal impact to bring such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agency, such information on an annual basis to, and that agency report to the General Assembly, and the Secretary of Administration. (like Local Public Schools to the Department of Education)." Allen commented that there is an extra "to" in this language that was not in the minutes. Wells struck the "to" and the comma following. The Workgroup voted in support of Recommendation 4, 6-0, with DPB abstaining.

Recommendation 5: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require that covered entities publish in a clear, easily accessible area on its website who should be contacted when an accessibility barrier is identified and that agencies are required to develop procedures to review the identified concern and respond to individual(s) submitting the concern." The Workgroup voted in support of Recommendation 5, 7-0.

Recommendation 6: "The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include grievance procedure language (like that found in lines 183-189 of the engrossed version of HB 1355), because other applicable federal and state laws already provide procedures for remedies." Heslinga suggested, to align with Delegate Tran's comments, that the following language be added to the end of this recommendation: "and this is addressed in Recommendation 5." The final wording for Recommendation 6 was read as follows: The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include grievance procedure language (like that found in lines 183-189 of the engrossed version of HB 1355), because other applicable federal and state laws already provide procedures for remedies, and this is addressed by Recommendation 5." The Workgroup voted in support of Recommendation 6, 6-0, with DPB abstaining.

Recommendation 7: "The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include specific 3 contractual penalty or consequence language like that found in lines 133-141 of the engrossed version of HB 1355 because public bodies already have the authority to address noncompliance with law or with contract provisions." The Workgroup voted in support of Recommendation 7, 6-0, with DPB abstaining.

V.   Conclusion

The Workgroup would like to thank the stakeholders and interested parties for their participation, as well as the subject matter experts from various state agencies who provided presentations and technical expertise to assist the Workgroup in its deliberations.

Appendix A: Letter to Workgroup and Text of HB 1355

This appendix contains the letter from the Chair of the Senate General Laws and Technology Committee, Senator Adam P. Ebbin, directing the Workgroup to study HB 1355 and the text of HB 1355.

SENATE OF VIRGINIA

ADAM P. EBBIN
39TH SENATORIAL DISTRICT
ALL OF THE CITY OF ALEXANDRIA;
AND PART OF ARLINGTON AND
FAIRFAX COUNTIES
POST OFFICE BOX 26415
ALEXANDRIA, VIRGINIA 22313

COMMITTEE ASSIGNMENTS:
    GENERAL LAWS AND TECHNOLOGY, CHAIR
    COMMERCE AND LABOR
    FINANCE AND APPROPRIATIONS
    PRIVILEGES AND ELECTIONS
    RULES

May 22, 2024

Acting Director Michael Bisogno
Department of General Services
Washington Building
1100 Bank Street, Suite 420
Richmond, Virginia 23219

Dear Acting Director Bisogno:

During the 2024 Session of the General Assembly, Delegate Kathy K.L. Tran introduced House Bill 1355 to update the Information Technology Access Act (ITAA). The Senate General Laws and Technology Committee unanimously continued the bill to 2025 with the recommendation that the Department of General Services (DGS) Procurement Workgroup study the issues identified in the legislation.

I write to request that the DGS Procurement Workgroup study how to modernize the ITAA to address information technology, using Delegate Tran's bill as presented to the Senate General Laws and Technology Committee as the starting point for discussion.

Delegate Tran's bill proposed an expansion of the ITAA to include information and communication and information technology access for individuals with disabilities at the state and local level, including students in public K-12 school divisions. Additionally, HB 1355 proposed bringing our code into compliance with the overlapping protections for Virginians with disabilities from federal and state laws and regulations, such as the Americans with Disabilities Act, Section 508 of the Rehabilitation Act, the Virginians with Disabilities Act, and the Virginia Human Rights Act.

The DGS Procurement Workgroup should develop recommendations for updating the ITAA and submit a report of its recommendations to the Chair of the Senate General Laws and Technology Committee and Delegate Tran by November 1, 2024.

Additionally, I ask that the DGS Procurement Workgroup seek stakeholder input and recommendations throughout the study process. Input should be considered from disability rights advocacy groups, higher education accessibility advocacy groups, institutions of higher education, public K-12 schools, state agencies, local governments, and other stakeholders.

Since the ITAA went into effect nearly 30 years ago, technology use has proliferated in almost all aspects of our lives, from how students learn in school to how we perform our work to how we access governmental services. Thank you for your vital assistance in studying how to modernize this section of the Code. Please contact my office if you have any questions or need any assistance.

Sincerely,
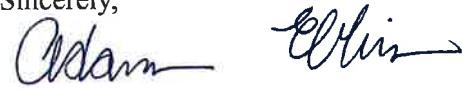
Senator Adam P. Ebbin
Chair, Senate General Laws and Technology

cc: Delegate Kathy K.L. Tran

The Honorable Margaret McDermid
Secretary of Administration

2024 SESSION

HB 1355 Information Technology Access Act; numerous organizational changes to Act.

Introduced by: **Kathy K.L. Tran | all patrons** ... **notes | add** to my profiles

SUMMARY AS PASSED HOUSE: (all summaries)

Information Technology Access Act; digital accessibility. Makes numerous organizational changes to the Information Technology Access Act. The bill defines "information and communications technology" as it relates to digital accessibility, defined in the bill, for all persons with disabilities. The bill permits the head of each covered entity, defined in the bill, to designate an employee to serve as such covered entity's digital accessibility coordinator and provides that such digital accessibility coordinator is responsible for developing and implementing such covered entity's digital accessibility policy. Th bill has a delayed effective date of July 1, 2025.

FULL TEXT

01/14/24 House: Presented and ordered printed 24105159D pdf | impact statement

02/12/24 House: Printed as engrossed 24105159D-E pdf | impact statements

AMENDMENTS

House subcommittee amendments and substitutes offered

House subcommittee amendments and substitutes adopted

Senate committee, floor amendments and substitutes offered

House amendments adopted

HISTORY

01/14/24 House: Presented and ordered printed 24105159D

01/14/24 House: Referred to Committee on Communications, Technology and Innovation

01/26/24 House: Assigned CT & I sub: Communications

02/05/24 House: Subcommittee recommends reporting with amendments (10-Y 0-N)

02/05/24 House: Subcommittee recommends referring to Committee on Appropriations

02/05/24 House: Reported from Communications, Technology and Innovation with amendment(s) (22-Y 0·

02/05/24 House: Referred to Committee on Appropriations

02/05/24 House: Assigned App. sub: General Government and Capital Outlay

02/09/24 House: Subcommittee recommends reporting with amendments (5-Y 2-N)

02/09/24 House: Reported from Appropriations with amendment(s) (13-Y 7-N)

02/11/24 House: Read first time

02/12/24 House: Read second time

02/12/24 House: Committee amendments agreed to

02/12/24 House: Engrossed by House as amended HB1355E

02/12/24 House: Printed as engrossed 24105159D-E

02/13/24 House: Read third time and passed House (71-Y 27-N)

02/13/24 House: VOTE: Passage (71-Y 27-N)

02/14/24 Senate: Constitutional reading dispensed

02/14/24 Senate: Referred to Committee on General Laws and Technology

24105159D

1 **HOUSE BILL NO. 1355**
2 House Amendments in [ ] - February 12, 2024
3 *A BILL to amend and reenact §§ 2.2-3500 through 2.2-3504 of the Code of Virginia and to amend the*
4 *Code of Virginia by adding in Chapter 35 of Title 2.2 a section numbered 2.2-3505, relating to*
5 *Information Technology Access Act; digital accessibility.*
6
Patron Prior to Engrossment—Delegate Tran
7
8 Referred to Committee on Communications, Technology and Innovation
9
10 **Be it enacted by the General Assembly of Virginia:**
11 **1. That §§ 2.2-3500 through 2.2-3504 of the Code of Virginia are amended and reenacted and that**
12 **the Code of Virginia is amended by adding in Chapter 35 of Title 2.2 a section numbered 2.2-3505**
13 **as follows:**
14 **§ 2.2-3500. Policy.**
15 A. The General Assembly finds that (i) the advent of the information age throughout the United
16 States and around the world has resulted in lasting changes in information *and communications*
17 technology; (ii) use of ~~interactive visual display terminals~~ *information and communications technology*
18 by state and state-assisted organizations ~~is becoming~~ *has become* a widespread means of access for
19 employees and the public to obtain information available electronically, but ~~nonvisual~~ access, ~~whether by~~
20 ~~speech, Braille, or other appropriate means~~ *for persons with disabilities* has *often* been overlooked ~~in~~
21 *when developing, designing,* purchasing, and deploying the latest information *and communications*
22 technology; (iii) ~~presentation of electronic data solely in a visual format is a barrier to access by~~
23 ~~individuals who are blind or visually impaired, preventing~~ *when presentation of data through*
24 *information and communications technology is not accessible by persons with disabilities, it prevents*
25 them from participating on equal terms in crucial areas of life, such as education and employment; (iv)
26 ~~alternatives, including both software and hardware adaptations, have been created so that interactive~~
27 ~~control of computers and use of the information presented is possible by both visual and nonvisual~~
28 ~~means~~ *accessible information and communications technology is often cheaper for the government in the*
29 *long run because it does not require post-implementation adaptions and does not expose the government*
30 *to liability under various state and federal laws that require access for persons with disabilities;* and (v)
31 the goals of the state in obtaining and deploying the most advanced forms of information *and*
32 *communications* technology properly include universal access so that ~~the segments of society with~~
33 ~~particular needs (including individuals unable to use visual displays)~~ *persons with disabilities* will not
34 *continue to* be left out of ~~the information age~~ *the latest and future technological innovations.*
35 B. It is the policy of the Commonwealth that all covered entities shall conduct themselves in
36 accordance with the following principles: (i) ~~individuals who are blind or visually impaired~~ *all persons*
37 *with disabilities* have the right to full participation in the life of the Commonwealth, including the use of
38 ~~advanced~~ *information and communications* technology that is provided by such covered entities for use
39 by employees, program participants, *students,* and members of the general public, and (ii) technology
40 purchased in whole or in part with funds provided by the Commonwealth, *acquired, or developed*
41 *in-house by a covered entity* to be used for the creation, storage, retrieval, *display,* or dissemination of
42 information and intended for use by employees, program participants, *students,* and members of the
43 general public shall be ~~adaptable for access by individuals who are blind or visually impaired. The~~
44 ~~implementation of nonvisual access technology under this chapter shall be determined on a case-by-case~~
45 ~~basis as the need arises~~ *accessible by all persons with disabilities.*
46 **§ 2.2-3501. Definitions.**
47 As used in this chapter, unless the context requires a different meaning:
48 "Access" means the ability to receive, use, and manipulate data and operate controls included in
49 information *and communications* technology.
50 ~~"Blind" or "visually impaired" individual means an individual who has: (i) a visual acuity of 20/200~~
51 ~~or less in the better eye with correcting lenses or has a limited field of vision so that the widest~~
52 ~~diameter of the visual field subtends an angle no greater than 20 degrees; (ii) a medically indicated~~
53 ~~expectation of visual deterioration; or (iii) a medically diagnosed limitation in visual functioning that~~
54 ~~restricts the individual's ability to read and write standard print at levels expected of individuals of~~
55 ~~comparable ability.~~
56 *"Accessibility" means alignment with federal Section 508 Standards and Section 255 Guidelines*
57 *adopted pursuant to 29 U.S.C. § 794d and 47 U.S.C. § 255.*
58 *"Accessibility Conformance Report" means a completed Voluntary Product Accessibility Template*

59 *(VPAT) or other document indicating the conformance of a product to accessibility standards such as*
60 *federal Section 508 Standards and Section 255 Guidelines adopted pursuant to 29 U.S.C. § 794d and 47*
61 *U.S.C. § 255. The Accessibility Conformance Report shall be completed by a digital accessibility subject*
62 *matter expert with significant experience with product evaluation or by a qualified neutral third party.*
63   *"Acquired" means obtained from a third party without the need to engage in the procurement*
64 *process.*
65   "Covered entity" means all state agencies, public institutions of higher education, *school divisions,*
66 and political subdivisions of the Commonwealth.
67   *"Digital accessibility" means technology that is designed in a way that allows for access by all users*
68 *regardless of the platform, including desktops, laptops, mobile platforms, and handheld devices. "Digital*
69 *accessibility" (i) includes the design of electronic documents, websites, applications, hardware, video,*
70 *audio, kiosks, copiers and printers, and other digital tools and (ii) allows for the integration and use of*
71 *assistive technologies such as screen readers, refreshable Braille displays, alternative input devices, and*
72 *tools that allow for the customization of a digital asset to achieve necessary levels of access.*
73   *"Equally effective alternate access plan" or "EEAAP" means a plan for information and*
74 *communications technology for persons with disabilities impacted by inaccessible ICT that is based on*
75 *(i) timeliness of delivery, (ii) accuracy of translation, and (iii) delivery in a manner and medium*
76 *appropriate to the disability of the person. Such alternate access plan, to be equally effective, is not*
77 *required to produce the identical result or level of achievement for persons with and without a disability*
78 *but must afford persons with a disability equal opportunity to obtain the same result, to gain the same*
79 *benefit, or to reach the same level of achievement in the most integrated setting appropriate to the*
80 *person's needs.*
81   *"Head of each covered entity" means the person responsible for making executive decisions on behalf*
82 *of the covered entity.*
83   "Information *and communications* technology" *or "ICT"* means ~~all electronic~~ *any hardware, software,*
84 *website, or other product or service primarily intended to fulfill or enable the function of* information
85 processing ~~hardware and software~~ *and communication by electronic means,* including
86 ~~telecommunications~~ *transmission and display via the Internet.*
87   ~~"Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.~~
88   ~~"Public broadcasting services" means the acquisition, production, and distribution by public~~
89 ~~broadcasting stations of noncommercial educational, instructional, informational, or cultural television~~
90 ~~and radio programs and information that may be transmitted by means of electronic communications,~~
91 ~~and related materials and services provided by such stations.~~
92   ~~"Telecommunications" means the transmission of information, images, pictures, voice, or data by~~
93 ~~radio, video, or other electronic or impulse means, but does not include public broadcasting.~~
94   *"Person with a disability" means the same as that term is defined in § 51.5-40.1.*
95   *"Procured" means a product or service obtained through a covered entity's procurement process.*
96   *"Vendor Accessibility Roadmap" means a document prepared and provided by the vendor*
97 *highlighting the aspects and elements of the product that do not meet accessibility standards and*
98 *includes the timeline for these aspects and elements to meet such accessibility standards.*
99   **§ 2.2-3502. Assurance of digital accessibility.**
100   In general, the head of each covered entity *or his designee* shall ensure that ~~information technology~~
101 ~~equipment and software~~ *the ICT* used by ~~blind or visually impaired~~ employees, program participants, or
102 members of the general public *who have a disability* (i) ~~provide~~ *provides* access (including interactive
103 use of the equipment, *digital tools,* and services) that is equivalent to that provided to individuals who
104 ~~are not blind or visually impaired~~ *do not have a disability;* (ii) ~~are~~ *is* designed to present information
105 (including prompts used for interactive communications) in formats *accessible or* adaptable to both
106 ~~visual and nonvisual use~~ *persons with and without disabilities;* and (iii) ~~have been purchased under a~~
107 ~~contract that includes the technology access clause required pursuant to § 2.2-3503~~ *conforms with*
108 *accessibility requirements whether developed in-house by a covered entity or procured.*
109   **§ 2.2-3503. Procurement requirements.**
110   A. ~~The~~ *An information and communications* technology access clause ~~specified in clause (iii) of~~
111 ~~§ 2.2-3502~~ shall be developed by the Secretary of Administration and shall require ~~compliance with the~~
112 ~~nonvisual access standards established in subsection B~~ *a current vendor-paid and completed Accessibility*
113 *Conformance Report indicating the level of conformance with accessibility for the [~~ITC~~ ICT] being*
114 *procured by the covered entity. Any areas of nonconformance shall be documented with a vendor-paid*
115 *and completed Vendor Accessibility Roadmap highlighting areas requiring improved accessibility,*
116 *including a timeline for each nonconforming area's completion.* The clause shall be included in all
117 future contracts for the procurement of ~~information technology~~ *ICT* by, or for the use of, entities
118 covered by this chapter *for which negotiation or renegotiation is begun* on or after the effective date of
119 this chapter.
120   B. ~~At a~~ ~~minimum, the nonvisual access standards shall include the following: (i) the effective,~~

121 interactive control and use of the technology (including the operating system), applications programs,
122 and format of the data presented, shall be readily achievable by nonvisual means; (ii) the technology
123 equipped for nonvisual access shall be compatible with information technology used by other individuals
124 with whom the blind or visually impaired individual interacts; (iii) nonvisual access technology shall be
125 integrated into networks used to share communications among employees, program participants, and the
126 public; and (iv) the technology for nonvisual access shall have the capability of providing equivalent
127 access by nonvisual means to telecommunications or other interconnected network services used by
128 persons who are not blind or visually impaired. A covered entity may stipulate additional specifications
129 in any procurement.
130 Compliance with the nonvisual access standards shall not be required if the head of a covered entity
131 determines that (a) the information technology is not available with nonvisual access because the
132 essential elements of the information technology are visual and (b) nonvisual equivalence is not
133 available. *All future contracts for the procurement of ICT by, or for the use of, entities covered by this*
134 *chapter [, except public institutions of higher education,] for which negotiation or renegotiation is*
135 *begun on or after July 1, 2025 shall include provisions specifying that, if the vendor fails to modify the*
136 *ICT areas identified to meet accessibility standards within [the agreed upon timeline or] 12 months*
137 *after the [date of contract award deployment of the ICT, whichever is earlier] , the covered entity*
138 *shall either (i) require the vendor to provide the covered entity with a credit equal to 12 months of the*
139 *contract's cost, not to exceed $10,000, or (ii) cancel such contract and, if such cancellation is due to*
140 *default or justifiable cause, require the vendor to reimburse the covered entity any outstanding*
141 *contracting costs.*
142 C. [*A covered entity may stipulate additional specifications in any procurement and may require*
143 *additional specifications for acquired or in-house developed ICT.*
144 *D.*] *Such procurement procedure adopted pursuant to this section shall not supersede or conflict*
145 *with any vendor procedure or policy adopted by a public institution of higher education under the*
146 *Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).*
147 [*D. The provisions of this section shall not apply to contracts for less than $10,000 entered into by*
148 *public institutions of higher education.*]
149 **§ 2.2-3504. Exclusions to digital accessibility.**
150 A. The head of any covered entity *or his designee who permits the procurement, acquisition, or*
151 *in-house development of ICT that does not otherwise conform to the standard of accessibility* may, with
152 respect to nonvisual access software or peripheral devices, approve the exclusion of the technology
153 access clause *approve such procurement, acquisition, or in-house development* only to the extent that the
154 cost of the software or devices for the covered entity would increase the total cost of the procurement
155 by more than five percent. All exclusions of the technology access clause from any contract shall be
156 reported annually to the Secretary of Administration *an equally effective alternate access plan is*
157 *developed for any affected persons with a disability impacted by the inaccessible ICT and is*
158 *implemented [prior to within 30 days of the] deployment of the ICT. [However, such exemption to the*
159 *standard of accessibility and such an EEAAP shall only be used when there is no other way to conform*
160 *to established accessibility requirements.] Any such EEAAPs developed and the Vendor Accessibility*
161 *Roadmap required by § 2.2-3503 shall be reviewed annually.*
162 B. The acquisition and installation of hardware, software, or peripheral devices used for nonvisual
163 access when the information technology is being used exclusively by individuals who are not blind or
164 visually impaired shall not be required. *Any such procurement, acquisition, or in-house developed digital*
165 *tool requiring an EEAAP shall be documented by the head of the covered entity. Such documentation*
166 *shall be maintained by the covered entity as directed by the appropriate records retention and*
167 *disposition schedule pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.).*
168 C. Notwithstanding the provisions of subsection B, the applications programs and underlying
169 operating systems (including the format of the data) used for the manipulation and presentation of
170 information shall permit the installation and effective use of nonvisual access software and peripheral
171 devices. *The requirements of this section shall not apply to localities with a population of less than*
172 *50,000.*
173 **§ 2.2-3505. Designation of covered entity digital accessibility coordinator; grievance process.**
174 *A. The head of each covered entity or his designee may designate an employee to serve as such*
175 *covered entity's digital accessibility coordinator. The digital accessibility coordinator shall be*
176 *responsible for ensuring that the covered entity complies with state and federal laws, including the*
177 *Virginians with Disabilities Act (§ 51.5-1 et seq.) and the Virginia Human Rights Act (§ 2.2-3900 et*
178 *seq.), to ensure that the ICT and other products or services can be accessed by persons with disabilities.*
179 *B. The covered entity's digital accessibility coordinator shall also be responsible for developing and*
180 *implementing the covered entity's digital accessibility policy. The name, phone number, email address,*
181 *and office address of the covered entity's digital accessibility coordinator shall be listed on such entity's*

182 *public website.*
183   *C. The head of each covered entity or his designee shall adopt and publish on such covered entity's*
184 *website a procedure for identifying barriers to access and a comprehensive grievance procedure that*
185 *provides for prompt and equitable resolution of complaints alleging any action that would be prohibited*
186 *by this chapter or any other law that protects the rights of persons with disabilities. These notifications*
187 *and the responses or resolutions for each shall be maintained by the covered entity in a manner*
188 *consistent with the appropriate records retention and disposition schedule created pursuant to the*
189 *Virginia Public Records Act (§ 42.1-76 et seq.).*
190 **2. That the provisions of this act shall become effective on July 1, 2025.**

Appendix B: July 17, 2024, Meeting Materials

This appendix contains the meeting materials from the July 17, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
   a. 2024 Proposed Workplan
   b. Code of Virginia Chapter 35. Information Technology Access Act
   c. VaLGITE Letter
   d. Commission on Local Government Estimate of Local Fiscal Impact
   e. Department of Planning and Budget 2024 Session Fiscal Impact Statement Introduced
   f. Department of Planning and Budget 2024 Session Fiscal Impact Statement Engrossed
   g. Joint Commission on Technology and Science HB 1246 Accessible Digital Tools and Education Study
   h. AELData The Three Levels of Accessibility
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

Meeting # 1
Wednesday, July 17, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Introduction of Workgroup Members, Representatives, and Staff**

III. **Approval of Meeting Minutes from the September 14, 2023 Workgroup Meeting**

IV. **Recap of the 2023 Work and Overview of Proposed 2024 Work Plan**

V. **Presentation on HB 1355**

> *The Honorable Kathy K.L. Tran*
> House of Delegates

VI. **Public Comment on HB 1355**

VII. **Discussion**

VIII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff

Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS
Kimberly Freiberger, Legislative Analyst, DGS

Meeting #1 – July 17, 2024 at 1:00 p.m.

1. Introduction of Workgroup Members, Representatives, and Staff
2. Recap of 2023 Work and Overview of Proposed 2024 Work Plan

Recap of 2023 Work:
During the 2024 Session, the General Assembly unanimously passed two bills that implemented recommendations from the Workgroup's study of SB 912 (2023) [SB 242 Patroned by Senator McPike and HB 242 Patroned by Delegate Bulova], SB 954 (2023) [SB 18 Patroned by Senator Locke and HB 1108 Patroned by Delegate Carr], and SB 1115 (2023) [SB 260 Patroned by Senator DeSteph and HB 1361 Patroned by Delegate Feggans].

PWG has four bills for study this year:
During the 2024 Session, the General Assembly referred the following three bills to the Workgroup for study:

- *HB 1355 (2024), patroned by Delegate Tran, which would expand the Information Technology Access Act (ITAA) to include information and communication and information technology access for individuals with disabilities at the state and local level, including K-12 school divisions. The bill seeks to bring the code into compliance with the overlapping protections for Virginians with disabilities from federal and state laws and regulations.(Report due: November 1, 2024)*

- *SB 492 (2024), patroned by Senator Stanley, which would prohibit public bodies from awarding contracts to acquire an electric vehicle or electric vehicle component from a business unless such business provides a sworn declaration from the manufacturer of such electric vehicle or electric vehicle component certifying that every person involved in the production of such electric vehicle or electric vehicle component and every person involved in the sourcing, manufacturing, or mining of the material used in such electric vehicle or electric vehicle component did not use forced labor or oppressive child labor in the sourcing, manufacturing, or mining of such electric vehicle or electric vehicle component. (Report due: November 1, 2024)*

- *HB 1524 (2024), patroned by Delegate Lopez, which would provide tax credits for mobile asphalt recycling machinery and equipment. (Report due: December 1, 2024)*

Last update: 7/1/2024

The following bill was passed by the General Assembly and directs the Workgroup to conduct a study:

- *HB 1404 (Chapter 834 of the 2024 Acts of Assembly), was patroned by Delegate Ward and creates a procurement enhancement program within the Department of Small Business and Supplier Diversity (DSBSD) that is tasked with implementing and meeting the goals of the Small SWaM Business Procurement Enhancement Program. This program includes a goal of a 42% utilization rate of small SWaM businesses, which includes a five percent utilization of microbusinesses. Additionally, there is a target goal of 50% subcontracting to small SWaM businesses in instances where the prime contractor is not a small SWaM business. DSBSD is required to conduct a disparity study every five years. The third enactment clause directs the Workgroup to assess the provisions of the act and determine what steps are needed to best position Virginia for success with an enhanced small SWaM business program. (Report due: December 1, 2024)*

3. HB 1355
   a. Presentation of bill
   b. Public Comment

Meeting #2 – August 6, 2024 at 10:00 a.m.

1. HB 1355
   a. Review information received at previous meeting and receive any additional information, or presentations.
   b. Discussion on findings and recommendations

2. SB 492
   a. Presentation of bill
   b. Public Comment

Meeting #3 – August 21, 2024 at 1:00 p.m.

1. HB 1355
   a. Review information received at previous meeting and receive any additional information, or presentations.
   b. Make preliminary findings and recommendations

2. SB 492
   a. Review information received at previous meeting and receive any additional information, or presentations.
   b. Discussion on findings and recommendations

3. HB 1524
   a. Presentation of bill
   b. Public Comment

4. HB 1404
   a. Presentation of bill
   b. Public Comment

Meeting #4 – September 4, 2024 at 10:00 a.m.

1. HB 1355
   a. Finalize findings and recommendations

2. SB 492
   a. Make preliminary findings and recommendations

3. HB 1524
   a. Review information received at previous meeting and receive any additional information or presentations
   b. Discussion on findings and recommendations
   c. Public Comment

4. HB 1404
   a. Review information received at previous meeting and receive any additional information or presentations
   b. Discussion on findings and recommendations
   c. Public Comment

Meeting #5 – September 17, 2024 at 10:00 a.m.

1. SB492
   a. Finalize findings and recommendations

2. HB 1524
   a. Review information received at previous meeting and receive any additional information or presentations
   b. Make preliminary findings and recommendations

3. HB 1404
   a. Review information received at previous meeting and receive any additional information or presentations
   b. Make preliminary findings and recommendations

Last update: 7/1/2024

Meeting #6 – October 8, 2024 at 10:00 a.m.

1. HB 1524
    a. Review information received at previous meeting and receive any additional information or presentations
    b. Make preliminary findings and recommendations

2. HB 1404
    a. Review information received at previous meeting and receive any additional information or presentations
    b. Make preliminary findings and recommendations

Meeting #7 – October 22, 2024 at 1:00 p.m.

1. HB 1524
    a. Finalize findings and recommendations

2. HB 1404
    a. Finalize findings and recommendations

November 1, 2024

1. Reports on the Workgroup's findings and recommendations on HB 1355 and SB 492 due to the General Assembly.

December 1, 2024

1. Reports on the Workgroup's findings and recommendations on HB 1524 and HB 1404 due to the General Assembly.

Chapter 35. Information Technology Access Act.

§ 2.2-3500. Findings; policy.

A. The General Assembly finds that (i) the advent of the information age throughout the United States and around the world has resulted in lasting changes in information technology; (ii) use of interactive visual display terminals by state and state-assisted organizations is becoming a widespread means of access for employees and the public to obtain information available electronically, but nonvisual access, whether by speech, Braille, or other appropriate means has been overlooked in purchasing an deploying the latest information technology; (iii) presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing them from participating on equal terms in crucial areas of life, such as education and employment; (iv) alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and use of the information presented is possible by both visual and nonvisual means; and (v) the goals of the state in obtaining and deploying the most advanced forms of information technology properly include universal access so that the segments of society with particular needs (including individuals unable to use visual displays) will not be left out of the information age.

B. It is the policy of the Commonwealth that all covered entities shall conduct themselves in accordance with the following principles: (i) individuals who are blind or visually impaired have the right to full participation in the life of the Commonwealth, including the use of advanced technology that is provided by such covered entities for use by employees, program participants, and members of the general public, and (ii) technology purchased in whole or in part with funds provided by the Commonwealth to be used for the creation, storage, retrieval, or dissemination of information and intended for use by employees, program participants, and members of the general public shall be adaptable for access by individuals who are blind or visually impaired. The implementation of nonvisual access technology under this chapter shall be determined on a case-by-case basis as the need arises.

1999, cc. 769, 773, § 2.1-807; 2001, c. 844.

§ 2.2-3501. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Access" means the ability to receive, use, and manipulate data and operate controls included in information technology.

"Blind" or "visually impaired" individual means an individual who has: (i) a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than 2 degrees; (ii) a medically indicated expectation of visual deterioration; or (iii) a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

"Covered entity" means all state agencies, public institutions of higher education, and political subdivisions of the Commonwealth.

"Information technology" means all electronic information processing hardware and software, including telecommunications.

"Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

"Public broadcasting services" means the acquisition, production, and distribution by public broadcasting stations of noncommercial educational, instructional, informational, or cultural television and radio programs and information that may be transmitted by means of electronic communications, and related materials and services provided by such stations.

"Telecommunications" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means, but does not include public broadcasting.

1999, cc. 769, 773, § 2.1-808; 2001, c. 844; 2012, cc. 803, 835; 2016, c. 296.

§ 2.2-3502. Assurance of nonvisual access.

In general, the head of each covered entity shall ensure that information technology equipment and software used by blind or visually impaired employees, program participants, or members of the general public (i) provide access (including interactive use of the equipment and services) that is equivalent to that provided to individuals who are not blind or visually impaired; (ii) are designed to present information (including prompts used for interactive communications) in formats adaptable to both visual and nonvisual use; and (iii) have been purchased under a contract that includes the technology access clause required pursuant to § 2.2-3503.

1999, cc. 769, 773, § 2.1-809; 2001, c. 844.

§ 2.2-3503. Procurement requirements.

A. The technology access clause specified in clause (iii) of § 2.2-3502 shall be developed by the Secretary of Administration and shall require compliance with the nonvisual access standards established in subsection B. The clause shall be included in all future contracts for the procurement of information technology by, or for the use of, entities covered by this chapter on or after the effective date of this chapter.

B. At a minimum, the nonvisual access standards shall include the following: (i) the effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means; (ii) the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts; (iii) nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

Compliance with the nonvisual access standards shall not be required if the head of a covered entity determines that (a) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (b) nonvisual equivalence is not available.

1999, cc. 769, 773, § 2.1-810; 2001, c. 844; 2020, c. 738.

§ 2.2-3504. Implementation.

A. The head of any covered entity may, with respect to nonvisual access software or peripheral devices, approve the exclusion of the technology access clause only to the extent that the cost of the software or devices for the covered entity would increase the total cost of the procurement by more than five percent. All exclusions of the technology access clause from any contract shall be reported annually to the Secretary of Administration.

B. The acquisition and installation of hardware, software, or peripheral devices used for nonvisual access when the information technology is being used exclusively by individuals who are not blind or visually impaired shall not be required.

C. Notwithstanding the provisions of subsection B, the applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

1999, cc. 769, 773, § 2.1-811; 2001, c. 844; 2020, c. 738.

February 28, 2024

Re: HB1355 – Information Technology Access Act Concerns

Dear Joint Committee Members,

I am reaching out to you today on behalf of the Virginia Local Government Information Technology Executives (VaLGITE) association. VaLGITE was established in 1996 and currently consists of over 125 local government IT executives across most of the localities in Virginia. Our hope is to share our organization's unique perspective on proposed legislation that will highly affect our duties and the localities' we support.

Specifically, I am writing to express VaLGITE's opposition to the proposed HB1355 legislation, "Assurance of Digital Accessibility Act", while also providing constructive feedback and recommendations for improving the bill's language and scope, if it is to be further pursued.

VaLGITE's primary concerns with HB1355 as currently drafted are:

Overly Broad Definitions

The definitions of "information and communications technology" and "digital accessibility" are overly broad, encompassing virtually all electronic devices, software, websites, and digital tools used by local and municipal government entities. This excessive scope would impose accessibility mandates on aspects of local and municipal government operations that may be burdensome and impractical.

If HB1355 is to be eventually enacted, VaLGITE recommends narrowing these definitions to public-facing systems and software used to deliver citizen services and information. Internal systems used solely by local and municipal government employees could be excluded without compromising the intent to make pubic-serving information and communications technology resources accessible by all citizens.

Duplication of Federal Standards

The spirit of what HB1355 aims to accomplish is already addressed through federal laws such as the Americans with Disabilities Act (ADA) and Section 508 of the Rehabilitation Act. As all state, local and municipal government entities must already adhere to these laws, HB1355 would seem to be duplicative and unnecessary. Rather than creating a separate standard for digital accessibility within the Commonwealth, the legislation could simply reinforce the already legislated requirement for state, local and municipal government entity websites, information services, and public-facing communication technologies to comply with existing federal accessibility guidelines.

Unfunded Mandates

While the intent behind HB1355 is admirable, the legislation is broadly written and lacks appropriations for implementation and offers no financial relief for the unfunded mandates it would impose. As such, it will be administratively burdensome and require redirection of our existing finite, critical resources away from core services that the citizens of our respective localities expect and rely on daily. If HB1355 is to be pursued, VaLGITE suggests amending the bill to create a specific *Digital Accessibility Fund* to assist public bodies in bringing systems and services into federal compliance. Financial incentives and centralized technical guidance could ease adoption rather than punitive measures.

VaLGITE appreciates the underlying goals of HB1355 but believe significant revisions are needed to make the requirements reasonable, impactful and achievable for local and municipal government entities. VaLGITE welcomes

VaLGITE

VIRGINIA LOCAL GOVERNMENT
INFORMATION TECHNOLOGY EXECUTIVES

further discussion on constructive ways to advance digital accessibility without overburdening local government or duplicating existing federal law. Please feel free to contact me if you would like additional recommendations on improving this draft legislation.

Sincerely,

Timothy Wyatt
VaLGITE President

Commission on Local Government

Estimate of Local Fiscal Impact

2024 General Assembly Session | 2/20/24

In accordance with the provisions of 30-19.03 of the Code of Virginia, the staff of the Commission on Local Government offers the following analysis of legislation impacting local governments.

HB 1355 (Amended): Information Technology Access Act; numerous organizational changes to Act (Patron: Del. Kathy L. Tran)

Bill Summary: Information Technology Access Act; digital accessibility. Makes numerous organizational changes to the Information Technology Access Act. The bill defines "information and communications technology" as it relates to digital accessibility, defined in the bill, for all persons with disabilities. The bill permits the head of each covered entity, defined in the bill, to designate an employee to serve as such covered entity's digital accessibility coordinator and provides that such digital accessibility coordinator is responsible for developing and implementing such covered entity's digital accessibility policy. The bill has a delayed effective date of July 1, 2025.

Local Fiscal Impact: **Net Additional Expenditure:___X___   Net Reduction of Revenues: _____**

Summary Analysis:

Number of Localities Responding: 2 Cities, 1 Counties, 2 Towns, 0 Other

Localities estimated a negative fiscal impact ranging from $6,000 to $2.4 million over the biennium. Cities and Counties reported a much greater impact that Towns.

Localities identified the bill's fiscal impact as the increase in personnel costs needed to hire a digital accessibility coordinator, integrators, and other contractors, as well as staff time to review vendor contracts for compliance; increased recurring operating costs for licensing subscriptions, compliant software, and policy development/compliance; and one-time operating expenses to replace hardware.

One County would need to rescope IT capital projects to develop custom solutions for each department of the County, resulting in one-time capital expenses.

Net Increase in Expenditures: Itemized Estimates by Responding Localities

Locality	Juris	Recurring Expense- Personnel		Recurring Expense - Operating		Recurring Expense - Capital		Recurring Expense - Other	
		FY25	FY26	FY25	FY26	FY25	FY26	FY25	FY26
Chesterfield County	County		150000		250000				
City of Alexandria	City		400000						
City of Winchester	City		25000		50000				
Town of Christiansburg	Town		1000		500				
Town of Rocky Mount	Town								1000

Net Increase in Expenditures: Itemized Estimates by Responding Localities

Locality	Nonrecurring Expense - Operating		Nonrecurring Expense - Capital		Nonrecurring Expense - Other		Total Increase in Expenses (Biennium Total)
	FY25	FY26	FY25	FY26	FY25	FY26	
Chesterfield County				2000000		0	2,400,000
City of Alexandria		1000500				0	1,400,500
City of Winchester							75,000
Town of Christiansburg		6000					7,500
Town of Rocky Mount						5000	6,000

Locality	Expenditure Narrative by Responding Localities
	The fiscal impact of this legislation is broad in nature and would require the County to procure multiple large-scale solutions across the majority of operations to be in compliance. With virtually all aspects of county operations having a digital touchpoint, there would need to either be one solution that could be used in conjunction with the technology related services/products the county already has, or more likely, multiple solutions to address things on a case-by-case basis. The case-by-case basis scenario would require the county to upgrade current technology related products or implement new ones entirely if in house or current vendor solution is unavailable. Over the last five years, the County's IST department has spent $22,100,000 on capital projects, which doesn't include other tech related projects from public safety and projects already underway, such as a new ERP system. This bill could potentially require the county to rescope many projects that have already been done in addition to future tech related projects. It is difficult to understate the financial implications of this legislation on county operations, but the numbers given are a conservative estimate on the one-time cost to address current disability accessibility and the ongoing maintenance and subscription cost related to those solutions. Additionally, this analysis assumes the County would hire a digital accessibility coordinator to oversee and ensure compliance with state and federal laws.
Chesterfield County	
City of Alexandria	Estimated fiscal impact range to start the City towards aligning with the proposed scope change compared to current ADA compliance activities would be roughly in the range of $1M - $1.5 million in capital and operating expenses for technology on-site/in-person, online/virtual, and City staff and solution needs to properly source the compliance needs. Technical staff would likely be a combination of FTEs and professional services for website, software, and hardware implementations, integrations, enhancements and sustainment. Non-Personnel expenditures would be roughly $1,000,500 based on industry observations for licensing and hardware costs. Integrations for technology platforms used to present information to the public (i.e. City Public Website) estimated starting at $100K - $200K in vendor / product specific professional services working with City technical and functional staff to address ADA compliance requirements.

Locality	Expenditure Narrative by Responding Localities
	1. Existing hardware/software in all departments, city websites, etc., must be assessed for digital accessibility. a. Existing purchased hardware/software not meeting the requirements may need to be replaced with other products. b. Existing free products (e.g., Greenshot screenshot capture software) may need to be replaced with paid alternatives for digital accessibility, resulting in new products that will likely carry annual maintenance or subscription fees. 2. Modify procurement process and future RFPs to adhere to purchasing from approved vendors that have completed an Accessibility Conformance Report or provided an Accessibility Roadmap for nonconformance areas. a. We could limit the vendors we purchase from, which may increase costs or result in higher consultation/maintenance/subscription fees. b. Any vendor in use that is providing a Vendor Accessibility Roadmap must be reviewed annually; this has the potential to be an extensive list that could be costly in personnel time. 3. Purchasing additional specialized components to meet digital accessibility needs, such as alternative input devices (motion tracking, head pointers, etc.), screen magnification software, text readers, and speech input software. a. Any accompanying hardware/software required for these components will have additional costs associated: i. Warranties ii. Software licensing iii. Hardware (microphones, adaptive tracking via webcam, etc.) 4. A digital accessibility coordinator would need to be appointed, a digital accessibility policy created, and an established identifying barrier to access procedure and comprehensive grievance procedure must be published on the city website. a. A digital accessibility coordinator is required. The role is designated to an existing staff member, indicating increased responsibilities/workload with a potential salary increase. b. The procedure must be published on the website and reviewed regularly.
City of Winchester	
Town of Christiansburg	I would estimate one-time cost associated with the drafting of a digital accessibility policy of $6,000 which would be staff time and legal consultation costs. I would estimate recurring costs of annual review of the policy and compliance with the policy at a cost of $1,000 personnel and $500 in operating costs.
Town of Rocky Mount	There will some one-time costs to develop this policy. $5,000 is only an estimate. We also estimate some recurring costs to ensure the policy is being followed.

Department of Planning and Budget
2024 Session Fiscal Impact Statement

1. **Bill Number:** HB1355

House of Origin	☒ Introduced	☐ Substitute	☐ Engrossed
Second House	☐ In Committee	☐ Substitute	☐ Enrolled

2. **Patron:** Tran

3. **Committee:** Committee Referral Pending

4. **Title:** Information Technology Access Act; digital accessibility.

5. **Summary:** Makes numerous organizational changes to the Information Technology Access Act (the Act). The bill expands the definition of "information technology" to "information and communications technology (ICT)" which now includes products or services primarily intended to fulfill or enable the function of information processing and communication by electronic means. The bill also defines "digital accessibility". The bill modifies the scope of the Act from applying to primarily individuals who are blind or visually impaired to all persons with disabilities.

   The bill requires the head of each covered entity, which includes all state agencies, public institutions of higher education, school divisions, and political subdivisions of the Commonwealth, to ensure that the ICT used by employees, program participants, or members of the general public who have a disability provides access that is equivalent to that provided to individuals who do not have a disability, is designed to present information in formats accessible or adaptable to both persons with and without disabilities, and conforms with accessibility requirements whether developed by the covered entity or purchased. The head of each covered entity has the option to designate an employee to serve as such covered entity's digital accessibility coordinator and to be responsible for developing and implementing such covered entity's digital accessibility policy and ensuring the covered entity's compliance with state and federal laws. The head of each covered entity is also required to adopt and publish a procedure for identifying barriers to access and a comprehensive grievance procedure that provides for prompt and equitable resolution of complaints alleging any action that would be prohibited by this chapter and any other law that protects the rights of persons with disabilities. These notifications and responses or resolutions shall be maintained by the covered entity in a manner consistent with the Virginia Public Records Act.

   The bill requires an information and technology access clause be developed by the Secretary of Administration to require a vendor-paid and completed Accessibility Conformance Report indicating the level of conformance with accessibility for the ICT being procured by the covered entity. The clause shall be included in all future contracts for the procurement of the ICT by, or for the use of, entities covered by this chapter that are begun to be negotiated or

re-negotiated on or after the effective date of the bill. The bill also requires additional contractual terms regarding the timeline to modify ICT areas. The head of each covered entity is able to approve an exception to the conformance of this act for the procurement, acquisition, or in-house development of the ICT only to the extent that an equally effective alternate access plan is developed and implemented prior to deployment of the ICT. The covered entity is to document such exceptions and maintain such records in accordance with the Virginia Public Records Act. The bill has a delayed effective date of July 1, 2025.

6. **Budget Amendment Necessary**: See Item 8.

7. **Fiscal Impact Estimates:** Preliminary – indeterminate. See Item 8.

8. **Fiscal Implications:** As described in the summary above, this legislation makes numerous changes to the Information Technology Access Act (the Act). The bill modifies the scope of the Act from applying to primarily individuals who are blind or visually impaired to all persons with disabilities. To the extent that the change in scope is broader than existing requirements under state or federal law, state agencies will likely incur costs to update their information and communications technology (ICT) to conform with the bill. The fiscal impact of these provisions is indeterminate.

The bill includes a requirement for a technology access clause for a vendor-paid and provided Accessibility Conformance Report indicating the level of conformance with accessibility for the ICT being procured or acquired by the covered entity. Any areas of nonconformance shall be documented with a vendor-paid and provided Vendor Accessibility Roadmap highlighting areas of improved accessibility, including a timeline for each nonconforming area's completion. The bill also requires all future contracts for the procurement of ICT to include provisions specifying that, if the vendor fails to modify the ICT areas identified to meet accessibility standards within 12 months after the date of contract award, the covered entity shall either (i) require the vendor to provide the covered entity with a credit equal to 12 months of the contract's cost, not to exceed $10,000, or (ii) cancel such contract and, if such cancellation is due to default or justifiable cause, require the vendor to reimburse the covered entity any outstanding contracting costs. To the extent that some vendors may not wish to accept such conditions, the pool of available bidders for ICT procurements may be affected, which may affect the ultimate price of procurements. The fiscal impact of these provisions is indeterminate.

The head of each covered entity has the option to designate an employee as the entity's digital accessibility coordinator. Some agencies may be able to designate an existing employee to fulfill that role, but other agencies may require additional resources to hire additional staff. Agencies that opt to hire additional staff to fulfill this role will have to absorb the cost within existing appropriations or request additional appropriation via the budget process in the future.

9. **Specific Agency or Political Subdivisions Affected:** All state agencies, public institutions of higher education, school divisions, and political subdivisions of the Commonwealth.

10. Technical Amendment Necessary: Yes, line 113, strike "ITC" and insert "ICT".

11. Other Comments: None.

Date: January 17, 2024
File: HB1355.docx

Department of Planning and Budget
2024 Session Fiscal Impact Statement

1. **Bill Number:** HB1355

House of Origin	☐ Introduced	☐ Substitute	☒ Engrossed		
Second House	☐ In Committee	☐ Substitute	☐ Enrolled		

2. **Patron:** Tran

3. **Committee:** Passed House

4. **Title:** Information Technology Access Act; digital accessibility.

5. **Summary:** Makes numerous organizational changes to the Information Technology Access Act (the Act). The bill expands the definition of "information technology" to "information and communications technology (ICT)" which now includes products or services primarily intended to fulfill or enable the function of information processing and communication by electronic means. The bill also defines "digital accessibility". The bill modifies the scope of the Act from applying to primarily individuals who are blind or visually impaired to all persons with disabilities.

   The bill requires the head of each covered entity, which includes all state agencies, public institutions of higher education, school divisions, and political subdivisions of the Commonwealth, to ensure that the ICT used by employees, program participants, or members of the general public who have a disability provides access that is equivalent to that provided to individuals who do not have a disability, is designed to present information in formats accessible or adaptable to both persons with and without disabilities, and conforms with accessibility requirements whether developed by the covered entity or purchased. The head of each covered entity has the option to designate an employee to serve as such covered entity's digital accessibility coordinator and to be responsible for developing and implementing such covered entity's digital accessibility policy and ensuring the covered entity's compliance with state and federal laws. The head of each covered entity is also required to adopt and publish a procedure for identifying barriers to access and a comprehensive grievance procedure that provides for prompt and equitable resolution of complaints alleging any action that would be prohibited by this chapter and any other law that protects the rights of persons with disabilities. These notifications and responses or resolutions shall be maintained by the covered entity in a manner consistent with the Virginia Public Records Act.

   The bill requires an information and technology access clause be developed by the Secretary of Administration to require a vendor-paid and completed Accessibility Conformance Report indicating the level of conformance with accessibility for the ICT being procured by the covered entity. The clause shall be included in all future contracts for the procurement of the ICT by, or for the use of, entities covered by this chapter that are begun to be negotiated or

re-negotiated on or after the effective date of the bill. The bill also requires additional contractual terms regarding the timeline to modify ICT areas, and exempts public institutions of education from this provision. The bill exempts contracts for less than $10,000 entered into by public institutions of higher education from the procurement requirements in the bill. The head of each covered entity is able to approve an exception to the conformance of this act for the procurement, acquisition, or in-house development of the ICT only to the extent that an equally effective alternate access plan is developed and implemented within 30 days of the deployment of the ICT. The covered entity is to document such exceptions and maintain such records in accordance with the Virginia Public Records Act. The bill has a delayed effective date of July 1, 2025.

6. **Budget Amendment Necessary**: See Item 8.

7. **Fiscal Impact Estimates:** Preliminary – indeterminate. See Item 8.

8. **Fiscal Implications:** As described in the summary above, this legislation makes numerous changes to the Information Technology Access Act (the Act). The bill modifies the scope of the Act from applying to primarily individuals who are blind or visually impaired to all persons with disabilities. To the extent that the change in scope is broader than existing requirements under state or federal law, state agencies will likely incur costs to update their information and communications technology (ICT) to conform with the bill. The fiscal impact of these provisions is indeterminate.

The bill includes a requirement for a technology access clause for a vendor-paid and provided Accessibility Conformance Report indicating the level of conformance with accessibility for the ICT being procured or acquired by the covered entity. Any areas of nonconformance shall be documented with a vendor-paid and provided Vendor Accessibility Roadmap highlighting areas of improved accessibility, including a timeline for each nonconforming area's completion. The bill also requires all future contracts for the procurement of ICT, except by public institutions of higher education, to include provisions specifying that, if the vendor fails to modify the ICT areas identified to meet accessibility standards within the agreed upon timeline or 12 months after the deployment of the ICT whichever is earlier, the covered entity shall either (i) require the vendor to provide the covered entity with a credit equal to 12 months of the contract's cost, not to exceed $10,000, or (ii) cancel such contract and, if such cancellation is due to default or justifiable cause, require the vendor to reimburse the covered entity any outstanding contracting costs. To the extent that some vendors may not wish to accept such conditions, the pool of available bidders for ICT procurements may be affected, which may affect the ultimate price of procurements. The bill also exempts any contract valued at less than $10,000 entered into by public institutions of higher education from the provisions described in this paragraph. The fiscal impact of these provisions is indeterminate.

The head of each covered entity has the option to designate an employee as the entity's digital accessibility coordinator. Some agencies may be able to designate an existing employee to fulfill that role, but other agencies may require additional resources to hire additional staff. Agencies that opt to hire additional staff to fulfill this role will have to absorb the cost within

existing appropriations or request additional appropriation via the budget process in the future.

9. **Specific Agency or Political Subdivisions Affected:** All state agencies, public institutions of higher education, school divisions, and political subdivisions of the Commonwealth.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** None.

Date: February 16, 2024
File: HB1355E.docx

Joint Commission on Technology and Science

HB 1246, Accessible Digital Tools and Education Study

2022 Final Report

http://dls.virginia.gov/commission/jcots.htm
https://studies.virginiageneralassembly.gov/studies/179

The following is the final report on the JCOTS study of HB 1246 (2022 Regular Session), completed during the 2022 interim. This report primarily contains a compilation of information, resources, recommendations, and input received by advocacy groups, agencies, and other individuals, with some notes from staff, where appropriate. The report provides input from various groups and stakeholders, offers insight into the topic of accessibility in digital tools for education in the Commonwealth, and provides considerations to potentially guide and inform future legislation. Some resources are attached as an addendum, for ease of reference. The attached VHEAP report should be considered as information and recommendations given by VHEAP for consideration in this study, and not, by itself, as a definitive finding or formal recommendation of this study. Information on this study can be found below.

Procedural Status of HB 1246

This bill was introduced by Delegate Tran and was initially sent to the House Committee on Education. In its original form, it consisted of new requirements for the procurement of education technology. While there, it was recommended for reporting by the Early Childhood/Innovation subcommittee with a substitute, with a recommendation to have it sent to House Appropriations, and then out of the full committee with that substitute. This substitute required the Department of Education to convene a work group consisting of specified groups and individuals to make recommendations regarding this issue. It was then sent to House Appropriations, in which it was recommended for reporting by the Elementary & Secondary Education subcommittee. House Appropriations reported the bill and the bill passed the House.

The bill was sent to the Senate Committee on Education and Health, which reported the bill. The bill was then referred to Senate Finance and Appropriations, which continued the bill to the 2023 session. At that same meeting, a request was made to send a letter to JCOTS to study the issue. At JCOTS's first meeting, JCOTS moved to study HB 1246. Staff received the letter requesting the JCOTS study on August 23, 2022.

Virginia Division of Legislative Services

Work Group Convened by Staff

The following is a summary of the information presented at the Work Group's virtual meeting on October 13, 2022, and information sent by those who were unable to attend:

At the direction of the Chair, staff contacted individual members and representatives of Virginia Higher Education Accessibility Partners (VHEAP), National Federation of the Blind of Virginia, The Arc of Virginia, VA Education Association, VA School Boards Association, Apple, and Gloucester County Public Schools, who were selected by the Chair.

On Thursday, October 13, 2022, staff met with the representatives of Virginia Higher Education Accessibility Partners, Virginia Federation of the Blind, VA Education Association, and Apple, and received written comments from other individuals. Staff received information that includes accounts of the experience of students, parents, and teachers with existing technology used for education, both accessible and inaccessible, and a report from Virginia Higher Education Accessibility Partners on digital accessibility in K-12, Higher Ed, and some state agencies. The information received also included recommendations from these groups and their representatives, such as the recommended creation of a set of baseline requirements for the procurement of accessible technology for education, with a focus on websites and apps, and the use of existing guidelines, such as Web Content Accessibility Guidelines (WCAG) and Section 508 standards, for purposes of evaluating such technologies.

The following are some considerations and recommendations given by individuals involved in the work group convened by staff:

- VHEAP provided the attached report, which includes their recommendations

- The VHEAP report generally recommended that K-12 and higher education would have baseline requirements for accessibility, integrating WCAG and Section 508 standards, to be set forth in the Information Technology Access Act (ITAA) (§ 2.2-3500 et seq.), such that those sets of requirements would be standard. Administration of such requirements would be handled by the respective controlling entities

- Many current guidelines, requirements, and laws are specifically tailored to accessibility with regard to sight; other accessibility issues should be considered and accommodated

- Current policies at some institutions and entities do not have the necessary momentum or enforceability (they "lack teeth") to address issues, and are easy to work around or altogether disregard, resulting in inaccessible digital tools being used

- Digital tools do not only affect accessibility in the classroom, but also accessibility for required standardized testing and resources for such testing

- With many current accessibility standards providing accommodations after the fact, teachers, parents, and students may be left to determine ways to make the digitals tools work, which may be out of their ability and expertise

- Concerns over expense, often to parents and students, to properly address changes needed for accommodation when such measures are taken after the fact for inaccessible tools

- Pooled purchasing and evaluation of technologies (among institutions or entities) could be used to reduce overall cost, both by sharing the cost of evaluation and by increasing the order size so that unit price may be lower

- Third-party testing of digital tools against guidelines; it was recommended that this should happen as early on in the process of procurement as possible, and to put the onus on vendors so that schools, institutions, and entities do not need to bear that cost

- The low prevalence of designated staffing at most institutions to coordinate accessibility efforts; this would be a potential area for improvement, if possible, particularly to help evaluate digital tools, and coordination between this staff across different institutions to address common issues
- "Leasing" technology is a method by which a technology is used until it needs updating, and is then replaced by the vendor with the newest version as part of the "leasing". This has lower prevalence regionally, where buying and using a technology until it no longer functions, often well past the need for update, may be common. This could help with keeping accessibility up to date and not relying on older tools purchased at larger intervals, and, instead, continuously "leased" and updated as part of that agreement
- Different vendors have different approaches for how to address requirements, particularly when the systems are integrated versus add-on. Some flexibility in how to address the requirements and the underlying issue/goal can be helpful.

Other Input

i. VHEAP

Another member of the VHEAP board of directors reiterated the recommendation of revising current code sections, including the ITAA, to make it serve as the baseline law for state agencies, higher education, and K-12, with policies and guidelines appropriately tailored to the needs of each. These comments also included the sharing of information and collaboration when there is overlap in the use of certain digital tools across these different groups.

ii. Constituents

Springfield Resident:

I am writing to share my experiences regarding the lack of accessibility of educational software for students with disabilities.

My daughter is now 10 years old, and her primary eligibilities are Speech-Language Impairment and Other Health Impairment. She has a rare genetic disorder that primarily exhibits as global apraxia - a motor planning disorder. In short, her brain knows what she wants to say and do, but the message gets mixed up on its way to her muscles. This means that fine motor skills, gross motor skills, and speech are all significantly impacted and delayed. She is minimally speaking, meaning that she has a few reliable, consistent phrases that are able to be understood by anyone. Her primary mode of communication is intended to be her augmentative and alternative communication (AAC) device, though her IEP team has never had the proper training and supports to implement the instruction necessary for her to learn the language of her AAC device. This means, at 10 years old, my daughter has very limited expressive communication skills, and yet she has demonstrated - when she has had proper supports and accommodations - that her reading skills are on grade level.

During the pandemic it became increasingly clear that the software she is expected to use at school, along with her general education peers, is not accessible to her. Specifically I am speaking to the programs from the Clever Company - ST Math and Imagine Language. Both programs required significant fine motor skills, and there were no adaptations available that made either of these programs accessible for my child. My

child is able to access touch screen applications, but the interactive graphics of these programs were very small, and she was not able to make her fingers adjust to what the program required in order to access them. There were no options for me to adjust size of the graphics within the app to accommodate this.

In addition, it's not just apps like these, but universal screeners - including those required by VA Law for all students - are inaccessible to students with complex communication needs and find motor delays. On top of the screeners themselves being inaccessible, the results are also not normed to include students with these disorders, which often makes the test results invalid.

These accessibility issues with software - software that is heavily relied upon in general education classrooms - and screeners are directly impacting the achievement of students with disabilities across Virginia, and that is very evident in the SOL scores for students with disabilities as well as the incredibly low bar that VDOE has set for pass-proficient on the Virginia Alternate Assessment Program (VAAP), where students in most grade levels only need to get 12/30 questions correct (on an already significantly modified and adapted assessment) to be considered pass/proficient.

The expectations for accessibility and achievement for students with disabilities in Virginia must improve if there is any hope of closing the widening achievement gap for these students.

Burke Resident:

I am writing in support of HB1246. I am a constituent from Burke, VA, and I have a 17-year old daughter who is blind and is a senior in high school in Fairfax County Public Schools. As a high-achieving high school student taking multiple AP and DE courses, she has found some challenges when using Google Suite applications. For example, Google Sheets is partially inaccessible and this is a resource often used for charts and tables in her AP Environmental Science class. The Google Sheets web application has the following issues: (1) Some headings do not expose heading semantics. (2) Some lists do not expose list semantics. (3) Some data tables do not identify the column and row headers.

In addition there are issues with the keyboard and accessibility when using Google Sheets, such as: (1) Some tab controls are not switchable using cursor keys. (2) Some buttons are only operable using the ENTER key. (3) Column widths and row heights cannot be changed using the keyboard-alone. (4) Drag and drop to rearrange the apps in the Google Apps disclosure panel cannot be performed using the keyboard-alone.

Formative (formerly GoFormative) is another platform that is commonly used for many Math classes, including my daughter's current class, Probability & Statistics. It is challenging to access using JAWS because of the graphics and interactive pictures that are utilized. In my daughter's case, her teachers have exempted her from completing these activities in the past or have provided her an alternate assignment to show mastery of content.

I agree that there should be legislation in place requiring stakeholders to review technology implemented by school systems and ensure their accessibility to all students before purchasing these platforms and resources and rolling them out to students with vision impairments and other learning differences.

iii. Virginia Department of Education (VDOE) staff

VDOE staff provided the following considerations regarding the initial version of the bill that they had identified at that time. These are not exhaustive and VDOE staff indicated that more information would be needed from VDOE to fully comment on the implications of implementation. Additionally, VDOE staff wished to make explicit that the following is not an official agency comment. Considerations:

- Practicability of such changes due to popular instructional software in schools (like Canvas and Schoology), which may not meet such suggested baseline standards due to some features that are not built in
- Potential for vendors being unable to build-out accessibility functionality, particularly for required universal accessible designs, such that school districts may not be able to procure third-party tools
- Variable fiscal impact on different agencies, organizations, schools, and entities
- Potentially extensive process of agency development of guidelines to administer such changes and new requirements
- Impact on many facets of administration of such digital tools and their use in teaching at the school and district level
- Potential impact on vendors, depending on current funding and familiarity with guidelines, particularly whether they are currently funded and required to follow such guidelines now or will have to comply from scratch

Staff Notes

The study was primarily limited to the issue of setting guidelines for the procurement process. Other potential avenues for addressing aspects of the underlying issues (including consumer protection or strengthening enforcement or efficiency of after the fact tailoring of measures to individual students to allow for accessible use of a given technology) were not within the scope of what this study was able to contemplate.

Other Resources

https://www.doe.virginia.gov/special_ed/index.shtml

https://www.section508.gov/manage/laws-and-policies/#508-policy

https://law.lis.virginia.gov/vacodefull/title2.2/chapter35/

https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=hb1246

For more information, see the *Joint Commission's website* or contact the Division of Legislative Services staff:

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VHEAP Digital Accessibility Report starts on the following page

"Status of Digital Accessibility Efforts across the Commonwealth of Virginia"

Description

The document highlights our findings on the status of digital accessibility-related supports and services in the k-12 public school systems, higher education institutions, and state agencies throughout the Commonwealth of Virginia. While not comprehensive, it offers a fair assessment of where our institutions are successfully addressing the digital accessibility needs of Virginians with disabilities and where we can make improvements. A more detailed study is necessary to obtain the most accurate picture.

Definitions

To aid respondents with understanding the questions being asked both in the surveys and during the focus group discussions, the VHEAP Board of Directors (BOD) provided the following definition for *"digital accessibility"*:

Digital accessibility includes but is not limited to:

- Adding captions and audio description to post-production video
- Accessible textbooks and related core materials used for teaching and learning
- Ensuring websites and online documentation can be accessed using assistive technology (e.g., screen readers, voice recognition, etc.)
- The ability to navigate a website or software application (e.g., learning management system, institutional communication platforms, grade portals) without using a mouse
- Using sufficient color contrast
- The addition of alternative text for images, graphics, and charts
- And other features that provide greater access to digital content

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Sources

The findings were derived from a combination of surveys and focus group discussions conducted during the month of September 2022. Those sources are described below:

Online Survey

The VHEAP Digital Accessibility Survey was sent to hundreds of K-12, higher ed, and state agency professionals in the Commonwealth of Virginia between 9/1 – 9/13 via listservs and direct email solicitation. Respondents were given until 9/16 to complete the survey. A reminder was sent on 9/13.

The survey asked respondents to provide basic demographic information like name, position title, place of employment, email address, agency affiliation, and the number of individuals employed at their respective institutions. K-12 and higher ed respondents were also asked to provide estimates of the total number of students served by their respective institutions.

In addition to basic demographic information, respondents were asked to provide estimates of the number of individuals with disabilities supported by their respective institutions (i.e., both internally and externally); how well they perceived their institutions to be addressing the digital accessibility needs of individuals with disabilities; and the perceived level of staffing and time committed to ensuring their institution's digital accessibility responsibilities are being addressed.

Finally, respondents were asked about their willingness to participate in a separate focus group to discuss their institution's digital accessibility efforts. They were also asked to provide additional leads if they were not the individuals tasked with overseeing their institution's digital accessibility efforts.

Findings from Online Survey

As of 9/20, 37 respondents had completed the survey. The breakdown was as follows:

Organization Type

| Other 8% | State Agency 11% | K-12 27% | Higher Ed 54% |

■ K-12   ■ Higher Ed   ■ State Agency   ■ Other
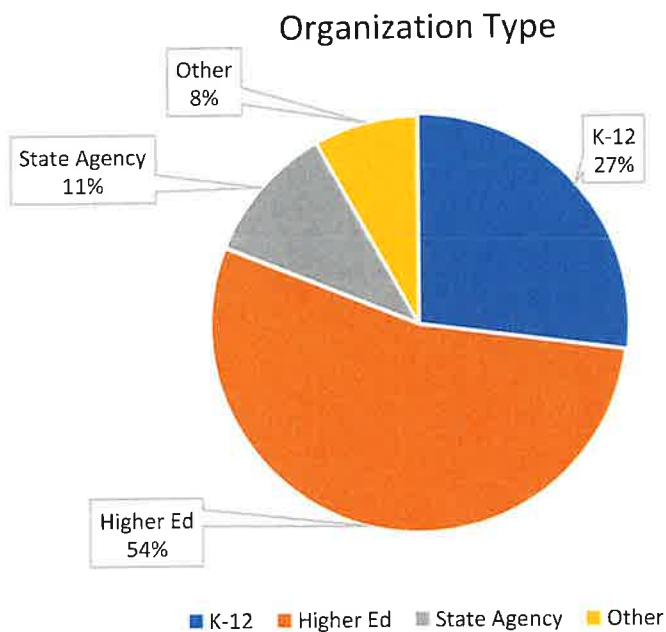
Note: Higher Ed respondents represent only public institutions. Respondents in the "Other" category included individuals and organizations working in the private sector, non-profit, or grant-funded organizations working in partnership with public K-12 and higher ed institutions.

Breakdown of Organizational Representation

The following data highlights the relative size and scope of the organizations identified in this survey:

- **K-12**

  - Approximately 85% of the schools represented have more than 125 employees.
  - Approximately 71% of the schools represented have more than 1500 employees in the school district.
  - Approximately 71% of the schools represented have more than 500 students in the school.
  - Approximately 71% of the schools represented have more than 5000 students in the school district.

- **Higher Ed**

  - *Employees*

of Employees

More than 10,000 — 12%

5,001-10,000 — 14%

Less than 1,000 — 41%

1,001-5,000 — 33%

■ Less than 1,000 ■ 1,001-5,000 ▦ 5,001-10,000 ■ More than 10,000

  - *Students*

of Students (FTE)

Less than 1,000 — 5%

1,001-5,000 — 20%

More than 10,000 — 60%

5,001-10,000 — 15%

■ Less than 1,000 ■ 1,001-5,000 ▦ 5,001-10,000 ■ More than 10,000
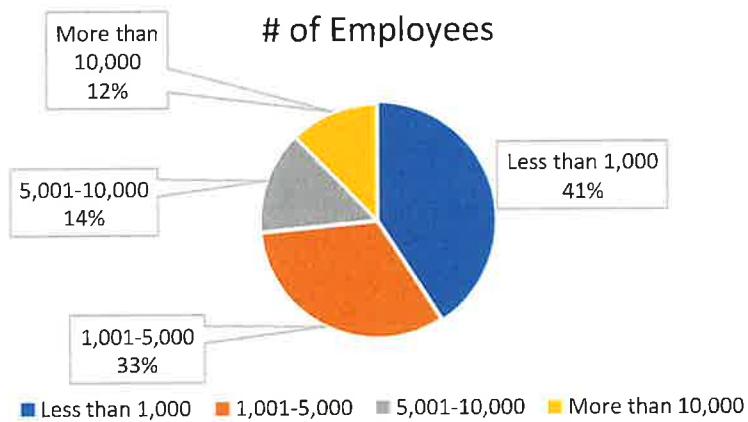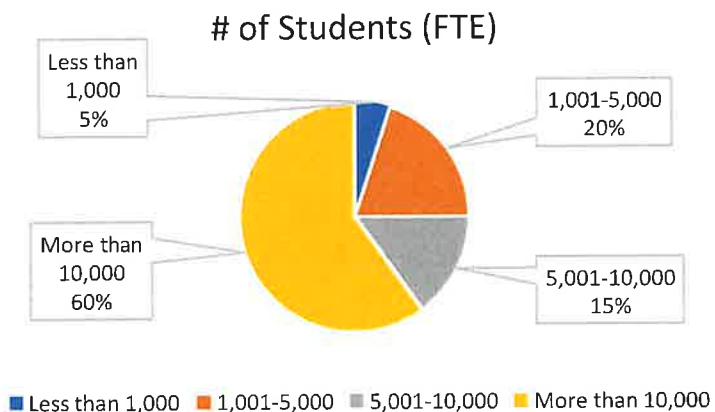
Respondents were asked to estimate the number of individuals with disabilities (i.e., employees; students, if applicable) in their respective organizations:

- **K-12**
  - Respondents estimate between 10%-30% of all students and employees have a disability.

- **Higher Ed**
  - Respondents estimate between 10%-30% of all students and employees have a disability.

- **State Agency[1]**
  - Respondents estimate that more than half of all employees have a disability. Approximately 8 in 10 students supported by the agency have a disability.

Focus Group Discussions

The BOD conducted focus group discussions between 9/22 and 9/29 with the following groups:

- **K-12[2]**, 9/27, 9/29
- **Higher Ed[3]**, 9/22
- **State Agency**, 9/27
- **Representatives from U.S. Department of Education's Office for Civil Rights (OCR) & U.S. Access Board**, 9/29

The following questions were used to inform our discussions:

1. What policies and procedures are in place to ensure that your institution's digital resources are accessible to individuals with disabilities?

2. Data is always helpful to provide direction or explain need. What types of data do you collect that reflect the accessibility needs of your students, faculty, staff, and guests to the Univ.? Who requests this data? Are there other depts that also collect data pertaining to accessibility/disability?

3. How is your institution being held accountable for ensuring that your materials are accessible to individuals with disabilities? Who is responsible for this accountability? What happens if you fall short?

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[1] This perspective is reflected by agencies under the *Disability Services Agencies* umbrella.

[2] Findings were gathered from 3 school divisions (*Loudoun, Stafford, Arlington*).

[3] Findings were gathered from 8 higher education institutions (*ODU, JMU, UMW, VT, GMU, UVA, NVCC, Longwood*).

4. Thinking broadly, what resources/guidance at the local level could assist you with ensuring digital resources are accessible to individuals with disabilities? What at the state level would help?

Summary of findings from Focus Group Discussions

K-12

Participants

The first focus group was facilitated by Mark Nichols and included representatives from Stafford County Public Schools and Arlington County Public Schools. A second focus group was facilitated by Mark Nichols and Korey Singleton and included representatives from Loudoun County Public Schools. These three divisions have dedicated assistive technology staff who are passionate advocates for digital accessibility across their institution. However, many school divisions across Virginia lack full-time staff who specifically support the assistive technology/digital accessibility needs of students with disabilities.

Existing Policies and Procedures

In general, no school division had written policies or procedures to ensure that all digital resources are accessible to individuals with disabilities. One school division identified the use of Blackboard's built-in content management system (CMS) accessibility features and a full-time webmaster as existing strategies to help ensure basic compliance; however, this approach is not error-free as one individual cited that videos are often uploaded without any closed captioning.

Another school division leverages their assistive technology (AT) specialist to participate in the on-boarding process for any technology considerations planned for classroom use. The AT specialist serves as the digital accessibility subject matter expert (SME) and provides feedback on the accessibility of certain tools prior to acquisition. However, it was mentioned that no tools have been denied acquisition due to inaccessibility and generally are marked as "accepted with reservation". This means that additional individualized accommodations would be needed for certain students with disabilities to successfully utilize the technology or resource (which requires more work for special education teachers and IEP teams).

Data Collection and Reporting

For the most part, no data is collected around digital accessibility. One school division uses Blackboard Ally within their learning management system (LMS) to analyze the accessibility of materials used for instruction. The December 1 SPED report that all K12 divisions submit to VDOE provides a district level snapshot of services for students with disabilities but does not include digital accessibility data. SPED directors can access the data of students that are receiving materials from AIM-VA, but that data only accounts for a fraction of the materials that may be used for instruction.

While all 3 school divisions utilize the Synergy digital IEP management system, case managers and related service staff across the institutions lack a common vernacular for identifying the digital accessibility needs of students. Therefore, data analysis around accommodations for digital tools and accessible educational materials is difficult. One school division mentioned that data is being collected on how many students receive assistive technology and/or assistive technology services as a drop-down within Synergy. Additionally, the same division utilizes Synergy to identify students that require accessible instructional materials through AIM-VA.

Successes

All school divisions have successfully deployed various digital technologies to remediate certain barriers with inaccessible digital content (e.g., Snap&Read, Read&Write, ReachDeck, Grackle). However, all divisions indicated that while initial product training was provided to teachers, ongoing training (especially for new teachers) is not consistent and competes with a multitude of trainings for which teachers are required to participate.

One school division has a textbook adoption committee that reviews digital materials for both content alignment and accessibility/usability. Some resources have been removed from purchasing consideration due to the user experience design (which included inaccessibility). It can be argued, however, that the success of this committee is attributed to the library media specialist for textbooks and digital resources who brings years of prior work experience in assistive technology service delivery and the creation of accessible educational materials.

Challenges

Division-level accountability for ensuring classroom materials be accessible to individuals with disabilities is absent across the school systems. Oftentimes, the Instructional Technology Resource Teachers (iTRTs) and Instructional Technology Facilitators (IFTs) find or create materials for teachers to integrate into lessons. These materials are typically inaccessible. Teachers then lack the time and/or training to remediate those materials prior to classroom use. Additionally, case managers responsible for IEP implementation are often focused on the compliance needs of an IEP, not necessarily the level of digital accessibility compliance for content used to support instruction.

Teachers also have a high level of autonomy to add content within the LMS without verification of accessibility. A common misperception among teachers and district content offices is that VDOE-approved textbooks and supplementary educational materials available in digital format are accessible.

One school division reported that web accessibility is a major issue as the LMS does not have a built-in accessibility checker. Another division reported that while Blackboard Ally is used to help teachers understand the scope of inaccessible content within the LMS, a consolidated effort is lacking to provide accountability and teacher training in creating accessible educational materials from the onset (before content reaches the LMS).

The following were suggested supports to ensure digital resources are accessible to all audiences:

- Support from VDOE for ensuring instructional content is accessible (creation and procurement) prior to use in school districts.
- Increasing awareness at the local and state level around digital accessibility as many teachers lack knowledge for how to create accessible instructional content.
- Expectation from VDOE (governed or shared) that when students create materials, those materials are accessible. This increases generational awareness for digital accessibility.
- Ongoing training and support are needed at both the local and state level. Several school divisions often start off strong with training, but with teacher attrition and competing district initiatives, priorities shift to meet pressing needs and often new employees do not receive the same type or level of training.
- Focus on Universal Design for Learning (UDL) at the state level to align digital accessibility with UDL framework implementation.
- Involve district superintendents in annual division reporting on digital accessibility (and progress toward established goals) to VDOE or other state entity.
- Guidance and support to ensure the accessibility of assessments (MAP testing, etc.).
- School divisions need funding to hire dedicated staff to provide training, monitoring, and support to ensure instructional content is accessible to students, teachers and staff, parents and guardians, and members of the school community.

Higher Education

Participants

Representatives from the following institutions participated in our focus group:

- Longwood University
- Virginia Tech
- George Mason University
- University of Mary Washington
- University of Virginia
- Old Dominion University
- James Madison University
- Northern Virginia Community College

Existing Policies and Procedures

Three of the represented institutions have implemented some level of process as it relates to reviewing the accessibility of digital solutions as they go through the procurement process. These processes, however, are primarily focused on enterprise applications (e.g., LMS, CMS, HR, etc.). Most of the institutions participating in this focus group have very little in place when it comes to ensuring newly acquired enterprise solutions are accessible to individuals with disabilities. When it comes to more commonly used applications and services like productivity tools (e.g., Microsoft 365, Google Suite), browser plug-ins, blogs, e-portfolio tools, email clients, etc., it is common for these tools to not be

checked for accessibility. This allows employees (i.e., faculty and staff) to install whatever they feel will be beneficial for their class or work environment.

Those institutions with accessibility reviews in place have a central accessibility office with a team of SMEs. These teams, oftentimes, exist separate from the Disability Services (i.e., student accommodations) or ADA (i.e., employee accommodations) offices at their respective institutions. Those without review procedures typically have one person or a very small team that addresses digital accessibility as a small part of their core responsibilities (e.g., Disability Services, ADA, Webmaster, IT Support, Library Services, etc.). In this respect, there is a lack of time or resources to implement adequate digital accessibility supports and services.

Even when policies and procedures are in place, informing people of their importance and the reason they should be followed is very challenging. One institution follows the Quality Matters matrix which includes a section on accessibility to at least ensure there is some emphasis on ensuring the content used in their online courses is accessible to individuals with disabilities.

Data Collection and Reporting

Collectively, participants felt that data collection and the eventual sharing of that data is important for creating accessible and inclusive campus environments. Many times, the information goes "up" the hierarchy, but not "out" to departments that can use it. For example, data that would be helpful when providing digital accessibility services could include such things as the number of documents remediated, the number of videos accurately captioned, the number of accessibility errors found on university websites, etc. Other data from the built environment could include where accessible doorways are located, where accessible restrooms are in each building, which facilities have elevators, the number of instructor stations with microphones, etc. Publicly sharing this information raises awareness about accessibility, especially digital accessibility, and the institution's efforts to ensure equivalent access to individuals with disabilities.

Some participants mentioned having centralized solutions in place like Blackboard Ally or automatic web crawlers that help in providing information that directs support services and justify the need for additional accessibility efforts. However, even with these centralized policies, procedures, and tools in place which could provide needed data, these solutions are not always leveraged effectively. Some departments can choose their own path or opt out of using or reporting on these processes altogether, thus keeping that information siloed to specific units or departments on campus. It was suggested that an executive-level mandate could help to ensure all academic and non-academic units participate in these types of data collection efforts.

Another challenge to data collection efforts involves access to information about the number of individuals with disabilities (i.e., students, staff, and faculty) on campuses and the types of accommodations in place to support these individuals. Research shows that the number of students

with disabilities attending higher education institutions is oftentimes underreported.[4] Students and employees with disabilities must self-identify to receive accommodations and this information is not shared publicly for obvious reasons (i.e., privacy laws like FERPA, HIPPA, etc.). With employees, for example, self-identification can be very challenging, often for fear of retaliation, lack of acceptance, or because procedures and resources are hard to understand or implement.

Accountability and Reporting

Feedback from focus group participants suggests that procedures for addressing digital accessibility-related issues (e.g., making websites, videos, and documents accessible) are inconsistent from one institution to the next. As mentioned earlier, some of the larger, better resourced institutions have a team to monitor and oversee these efforts. They have established procedures for addressing digital accessibility, provide training, report on digital accessibility, and have varying degrees of senior-level administrative support (e.g., VP, CIO, etc.).

The smaller institutions, in most instances, lack that type of infrastructure. Their efforts are largely focused on addressing individual accommodations (e.g., when an individual discloses that they have a disability) as opposed to broader digital accessibility-related issues. For example, some institutions have automatic web crawlers (e.g., Siteimprove, DubBOT, etc.) to assist with reporting web accessibility errors; however, it is up to each department or unit at the institution to address the issues that are reported. With limited oversight and little to no staff with expertise to provide guidance on how to correct these issues, the problems are oftentimes unaddressed. In addition to limited oversight at the department level, participants also commented that there is little to no support in place from senior-level administration.

Successes

One notable program that was highlighted has been in place for a few years at Virginia Tech. They implemented a certification training program to prepare tech professionals in higher education to take digital accessibility certification exams (i.e., CPAAC, WAS) offered through the International Association of Accessibility Professionals (IAAP). This is offered to Tech employees through a grant program. The goal of this effort is to improve awareness of digital accessibility within the Virginia Tech community and empower strategic partners to independently address digital accessibility issues in their respective units. In recent years, VT has offered this training to others in the higher education community who would like to take the training course.

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[4] Gould, R., & Parker Harris, S. (2019). Higher education and the ADA: An ADA Knowledge Translation Center research brief (p. 9). University of Illinois at Chicago. https://adata.org/sites/adata.org/files/files/ADA%20Research%20Brief_Higher%20Education%20and%20the%20ADA_FINAL.pdf

Challenges/Opportunities

Based upon feedback from the participants, funding and staffing are the overriding challenges. Accessibility, although required by federal law, is not seen as a priority in most institutions.

Several of our participants mentioned that having a centralized position that is an advocate for digital accessibility would help. This position would place greater awareness on the need to ensure equivalent access to digital resources and could play a larger role in coordinating institutional efforts. For example, in addition to coordinating enterprise-wide digital accessibility monitoring and reporting efforts, this position could also focus on training initiatives to improve the capacity of individuals working in the tech positions to independently identify and correct digital accessibility-related issues.

State Agency

Brief Description of the DSA Structure/Hierarchy

This meeting was facilitated by Korey Singleton, Lori Kressin, and Mark Nichols and included a representative from the Virginia Department for Aging and Rehabilitative Services (DARS). DARS is part of a group of organizations collectively called the Disability Services Agencies (DSA). This includes the following agencies:

- Department for Aging and Rehabilitative Services (DARS)
- Woodrow Wilson Rehabilitation Center (WWRC)
- Department for the Blind and Vision Impaired (DBVI)
- Virginia Rehabilitation Center for the Blind and Vision Impaired (VRCBVI)
- Virginia Board for People with Disabilities, and (VBPD)
- Assistive Technology Loan Fund Authority (ATLFA)

It was mentioned that DARS has MOUs with the other agencies to share IT supports and services (i.e., web maintenance, development, accessibility, etc.). The Agency Information Technology Resource (AITR) oversees these services and essentially acts as the liaison between these agencies and VITA. There is one AITR per agency throughout the Executive Branch. It was estimated there are between 50-100 agencies under the Executive Branch.

Existing Policies and Procedures

It was reported that VITA is tasked with providing IT governance for all the state agencies, including the DSAs. VITA's governance includes but is not limited to IT procurement, security, operational hardware, etc. VITA's IT Procurement Policies (i.e., Chapter 10) and IT Accessibility and Website Standards are prominently displayed on their website and Section 508 appears to be tightly integrated into this process.

On a broad level, VITA was described as very engaged with respect to ensuring digital accessibility is integrated into the IT purchasing and procurement process. The AITR for DARS shares a unique perspective in that this individual is the liaison for agencies that, relative to others, both hire and serve a

large number of Virginians with disabilities. For that reason, any RFPs that are initiated by those agencies or any IT solutions coming from VITA that will directly impact those individuals are vetted to ensure they are as accessible as possible. It was unclear how much digital accessibility was being considered outside of the DSA. The AITR for DARS does receive calls on occasion from other AITRs when there is a question about supporting an individual with a disability. However, it was suggested this appears to have more to do with handling a specific/immediate accommodation requests as opposed to broadly integrating digital accessibility-related policies or procedures at those respective agencies.

Internally, the DSAs are described as having a webmaster (*full-time*) and a part-time backup to assist with ongoing development and maintenance of DSA websites. Each website references WCAG Standards, https://www.dars.virginia.gov/webpolicy.htm#Accessibility&gsc.tab=0 and they take great care to ensure that the resources hosted on those sites are accessible. They have also taken steps to internally create accessibility guides that assist agency staff with how to create accessible instructional materials (document accessibility). Staff members can request to have content uploaded to the website, but it is the responsibility of the staff member to ensure the resources are accessible. The webmaster and support staff will point out accessibility issues on occasion, but they are not responsible for making sure the content is accessible upfront. It was unclear how accessible the content being shared internally amongst staff is.

Data Collection and Reporting

From what we could gather, data on the implementation and maintenance of web standards (*including accessibility*) is collected and shared with VITA on an annual basis. However, that information does not appear to be shared publicly.

It was suggested that there is no real penalty when digital accessibility-related information is not reported. In the long run, each agency is responsible for their websites and the content they host on those websites. If they fall out of compliance, they increase their risk for a lawsuit or a compliant due to denying an individual with a disability equivalent access.

Successes

DSA was described as meeting or exceeding VITA Web Standards. In this respect, the DSAs are doing a great job ensuring that content hosted on DSA websites are accessible to individuals with disabilities. They are also doing a good job integrating IT accessibility and users with disabilities into the purchasing and procurement process when it comes to the products and services procured, developed, or maintained by the DSAs. It was unclear how well the state agencies outside of the DSAs are handling this.

Challenges

It was suggested improvements could be made with respect to the integration of accessibility into the IT purchasing and procurement process for enterprise applications. IT requests or solutions that do not originate from within the DSAs or that are not designed with the DSAs in mind appear to lack the same

emphasis on accessibility considerations. Modeling the DSAs commitment to include accessibility considerations and users with disabilities into VITA's IT purchasing and procurement process could broadly improve the accessibility of IT solutions across the state.

Additionally, it was suggested that more support was needed to ensure content hosted on public-facing web resources (i.e., documents, applications, trainings, etc.) is accessible to individuals with disabilities. At the present date, agency staff are not required to undergo training on how to create accessible content. It was mentioned that there is an annual Lunch & Learn, but it appears to be voluntary. Implementing more training on digital accessibility would improve general awareness about these types of issues and help to mitigate some of the existing issues in the long run.

Challenges/Issues with Virginia's Existing Information Technology Access Act

- References "*Covered Entity*", which includes all state agencies, public institutions of higher education, and political subdivisions of the Commonwealth. However, K-12 school systems are excluded.

- References "*Exclusions of Technology Access Clause*", which is determined by head of the covered entity and is allowed if total costs increase by 5%. This exclusion is being granted by individuals without consultation with ADA Coordinators or other accessibility SMEs.

- If technology is not being used by individuals who are blind or visually impaired, then accessible technology is not required. This disregards the needs of individuals with other types of disabilities (e.g., deaf, cognitive/learning disabilities, physical limitations, etc.).

- Lack of accountability or reporting requirements.

- Lack of adequate funding/staffing to support digital accessibility efforts across the Commonwealth:

  - **K-12** - Like higher ed, it appears larger districts can dedicate some staff toward addressing this effort. This is handled in a part-time capacity as opposed to having a position fully staffed. There appears to be a reliance on VDOE to "vet" products for accessibility, but that is not being done at the VDOE level. Across most school districts, digital accessibility issues are handled as accommodations (whether it be in the classroom or by that admin for parent/visitor-related needs).

  - **Higher Ed** – IT accessibility-related policies and procedures are left up to each respective institution; in most schools, the responsibility is likely seeded to the DS/ADA Office in some way. Larger institutions have some staffing but varies from one institution to the next. Most institutions are not addressing these concerns unless there is an accommodation need. The problem with this strategy is that many digital accessibility issues must be addressed during the implementation or development lifecycle of the solution, not after it has been implemented.

- o **State Agencies** – AITRs and webmasters appear to be "*standing in the accessibility gap*" for state agencies; we could not, however, determine if this effort is prioritized outside of the DSAs beyond the need for an accommodation. The process appears to reflect how many K-12 public school systems and higher education institutions are operating.

- Agencies/Institutions/Organizations are duplicating efforts with respect to addressing IT accessibility-related concerns during the IT purchasing and procurement process.

  - o In our discussions with colleagues across the Commonwealth, we find that many public-school systems and higher education institutions are using similar technologies (e.g., learning management systems, content management systems, etc.). While one school system/institution may require vendors follow a specific IT accessibility-related protocol (e.g., provision of VPATs, demo of accessibility product features, requiring of timeline for IT accessibility compliance, etc.), others do not. This results in an uneven provision of services from one public school system or higher education institution to the next. This ultimately hurts those students who are enrolled in school systems or higher education institutions who do not have access to those same types of support resources.

Proposed Recommendations

Based upon the findings from the online surveys, focus group discussions, and our own internal deliberations, the BOD proposes the following recommendations to Virginia's *Information Technology Access Act (ITAA) (§2.2-3500 - §2.2-3504)*:

- **Integrate WCAG and Section 508 as Baseline Technical Standards**

  - o WCAG 2.1 A and AA, automatically take into consideration other types of disabilities (e.g., low vision, cognitive disabilities). WCAG 2.1 also takes into consideration the need for mobile access. Define WCAG 2.1 A and AA as what you are "striving for" (i.e., the baseline). Agencies can always exceed it if they choose but this is the baseline for what is required for websites, online content, and non-web documents.
  - o As an international standard (ISO/IEC 40500:2012), WCAG is the linchpin between other international laws (e.g., Canada, European Union, etc.)
  - o Section 508 is broader than WCAG. It takes into consideration software applications, kiosks, desktop computers, printers, telecom, etc.

- **Suggested Plan of Action for Institutions/Organizations to Follow (Implementation Strategy)**

  - o Build on VITA's IT Governance structure

    - ▪ VITA's General IT Procurement Policies, Chapter 10
      - • Section 508 is integrated policy

- **VITA's IT Accessibility and Web Standards**

  o Institutions/Organizations should be required to do the following:

    - Establish/Update IT Accessibility Policies and Procedures, including accessibility reviews during the procurement process
    - Hire/Assign staffing to oversee institution/organization's digital accessibility efforts
      - Define roles and responsibilities for each institution/organization (e.g., who owns governance)
    - Establish/Define grievance procedures
    - Establish/Update IT procurement policies and procedures referencing Section 508 and WCAG 2.1 A and AA
    - Require annual training on IT accessibility for all institution/organization staff
    - Establish central website/repository for IT accessibility-related supports and resources
    - Establish procedures for ongoing monitoring of IT accessibility-related issues.

- **Accountability (Reporting Mechanisms)**

  o Establish procedures for reporting IT accessibility-related issues and efforts.
    - Like VITA, this process raises awareness about need for IT accessibility without being punitive.
    - Standardize reporting documentation to ensure consistency from one institution/organization to the next.
    - Designate point of contact for each institution/organization to handle reporting.
    - Establish designated reporting schedule.
    - Designate who should store/compile collected reports (e.g., Institution/Organization Heads -- University President, CIO, etc.).

Summation

As stated previously, the information presented in this report is not comprehensive. It is fair overview of where public-school systems, higher education institutions, and state agencies in the Commonwealth of Virginia are with respect to supporting the digital accessibility needs of Virginians with disabilities. In addition to highlighting the issues, we presented recommendations which are consistent with the guidance and consultation offered by our federal partners in the U.S. Dept. of Education's Office for Civil Rights and the U.S. Access Board.

Since 2016, OCR has signed resolution agreements with 14 public school systems, 2 colleges, and 1 public library in the Commonwealth of Virginia. All these agreements reference issues impacting the equivalent access to digital resources by Virginians with disabilities (e.g., images without alternative text descriptions, inadequate support for keyboard-only access, hyperlinks without meaningful labels, etc.).

The above-mentioned recommendations lay the groundwork for the ITAA to act as the foundational law that all IT accessibility polices and directives in the Commonwealth of Virginia are built upon. They also keep the ITAA under the General Administration umbrella and bring K-12 public school systems into the fold. Additionally, this common ground approach toward greater digital accessibility across the Commonwealth not only benefits those working in the accessibility arena, but more importantly provides a welcoming and accessible environment for Virginians of all abilities to seek employment, participate in education, and engage with the broader community.

Report prepared by

- Korey Singleton (*Assistive Technology Initiative Manager*), George Mason University
- Lori Kressin (*Coordinator of Academic Accessibility*), University of Virginia
- Mark Nichols (*Senior Director of Universal Design and Accessible Technologies*), Virginia Tech

On behalf of the VHEAP Board of Directors

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The Three Levels Of Accessibility

overview of
Compliance Level

A
Must Have

This is the most basic level of compliance in WCAG

AA
Should Have

This is the most desired level of guidelines having good readable text along with good contrast ratio and support for interface zoom.

AAA
Good To Have

This is the highest level of accessibility requires sign language for audio content which is a bit difficult in all cases to put in place.
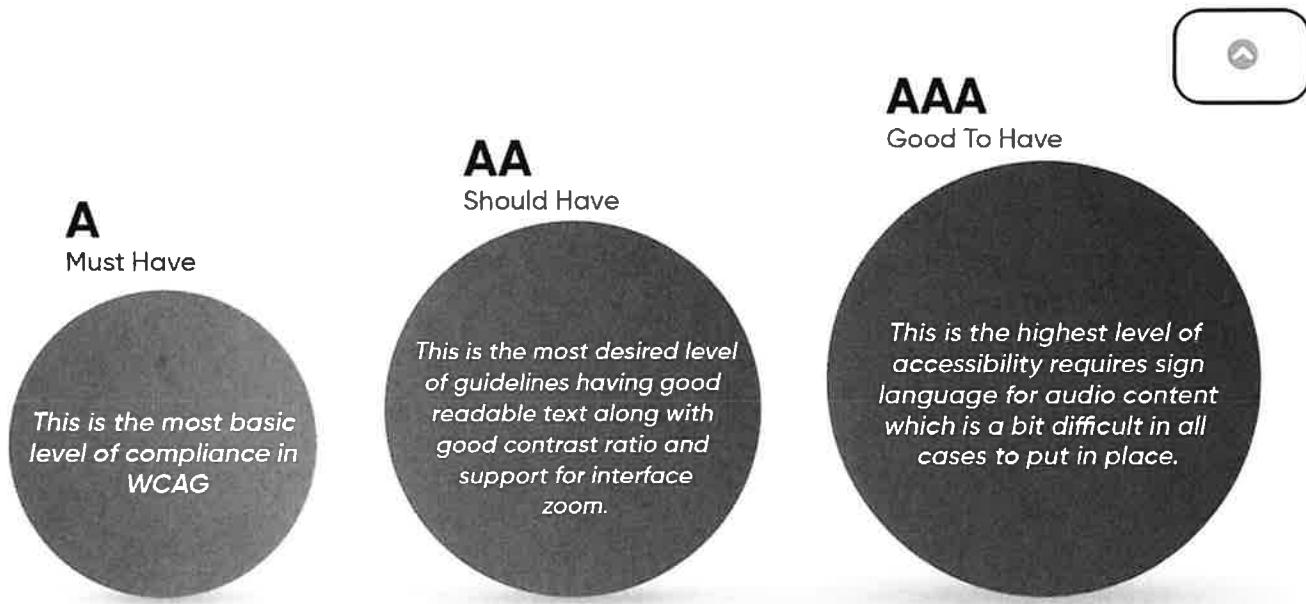
📅 **November 2, 2022**   🏷️ **Accessibility Services**

To make web accessibility a priority, you must establish objectives and monitor your progress. The Web Content Accessibility Guidelines (WCAG) provide the best framework currently available. Published by the World Wide Web Consortium (W3C), WCAG is the consensus standard for digital accessibility.

WCAG is founded on four fundamental principles: Content should be perceivable, operable, understandable, and robust. The recommendations, which are also known as success criteria, provide practical information for developing more effective websites and mobile applications. In order to provide a structured framework, the guidelines are divided into three conformance levels:

Table of Contents

Three conformance levels of WCAG

1. **Level A** – Considered to be the least stringent, Level A success criteria are required for all websites. If your website is not compliant with WCAG Level A, it may have severe accessibility concerns that prevent people with disabilities from using it.

2. **Level AA** – Websites that conform to WCAG Level AA are reasonably accessible for the majority of users. The majority of websites should strive towards Level AA compliance. To accomplish this objective, content must achieve all Level AA and Level A success criteria.

3. **Level AAA** – Web content that conforms to WCAG guidelines Level AAA accessibility is considered ideal. To achieve Level AAA conformity, content must adhere to every WCAG recommendation (including Level AA and Level A success criteria). Nevertheless, some Level AAA success criteria are highly stringent, and certain types of content cannot adhere to every guideline.

As stated previously, the majority of websites should strive for Level AA conformance with the latest version of WCAG (currently WCAG 2.1, but WCAG 2.2 may be issued in the approaching months).

Conformance to WCAG Level AA provides reasonable accessibility

If a website fails to meet the success criterion for WCAG 2.1 Level A, it has significant accessibility issues. The success criteria for Level A requires text alternatives for non-text information, keyboard navigation, and other fundamental factors.

Level A compliance is a fantastic beginning point, but Level AA goes beyond that by ensuring that your content is practically usable for the majority of individuals, regardless of their ability. For this reason, many accessibility rules mandate Level AA conformity.

The following are examples of each Level of success criteria:

1. Understanding Success Criterion 2.4.3: Focus Order (Level A)

Users should be able to sequentially navigate through the content in such a way that they can easily consume information.

2. Understanding Success Criterion 3.2.3: Consistent Navigation (Level AA)

Maintain a consistent presentation and layout across web pages on your website that follow the same way to navigate content.

3. Understanding Success Criterion 1.2.8: Media Alternative (Prerecorded) Level AAA

Time-based media should be provided with an alternative to make it accessible to individuals whose vision is too poor to reliably read captions and whose hearing is too poor to reliably hear dialogue and audio descriptions.

Unfortunately, the majority of websites do not comply with WCAG Level AA. Each year, the non-profit organization WebAIM evaluates the homepages of the top one million websites using an automated system. 97.4% of homepages did not comply with WCAG Level AA, according to WebAIM's 2021 study.

There are a lot of Level AAA WCAG guidelines that can enhance your material

WCAG 2.1 Level AA compliance is a reasonable target for an accessibility initiative's initial phase. By adhering to the guidelines, you can enjoy enhanced search engine optimization, increased user retention rates, and other digital accessibility benefits.

However, you should not disregard the WCAG Level AAA recommendations. Although these success criteria are stringent, they provide extra scope for growing your audience. In most cases, Level AAA rules need a color contrast ratio of at least 7:1; some sites can easily conform to this guideline, and by doing so, they can deliver a better experience for a greater number of their users.

To achieve your accessibility objectives, you will need to identify current WCAG conformance failures and then monitor your website's improvement. AEL Data helps B2B companies with web accessibility audits targeting WCAG 2.1 Level A and AA compliance. Our process replicates the actions of a disabled visitor on your website by testing it with keyboard only and screen reader navigation along with color contrast testing and manual code review.

We are always glad to show you a copy of our granular audit report to see how we itemize bugs in terms of compliance and priority. Please fill out this form to get your copy.

Aditya Bikkani

Aditya is the COO of AELData, a growing technology company in the Digital Publishing and Education sectors. He is also an entrepreneur and founder of an accessibility tool called LERA. A W3C COGA (Cognitive and Learning Disabilities Accessibility) Community Member Aditya contributes to researching methodologies to improve web accessibility and usability for people with cognitive and learning disabilities.

CATEGORIES

Accessibility Services

Accessible Educational Materials

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NIMAS XML

PDF Accessibility

Resources

Stem Accessibility

WCAG

Web Accessibility

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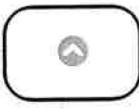
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Related Blogs

Why are ARIA labels crucial for your Website's Accessibility?

Table of Contents1 What is ARIA label?2 Purpose of ARIA labels 3 Benefits of using Aria Labels in Web Development3.1 1. Consistency3.2 2. Search Engine Optimization

Current State of
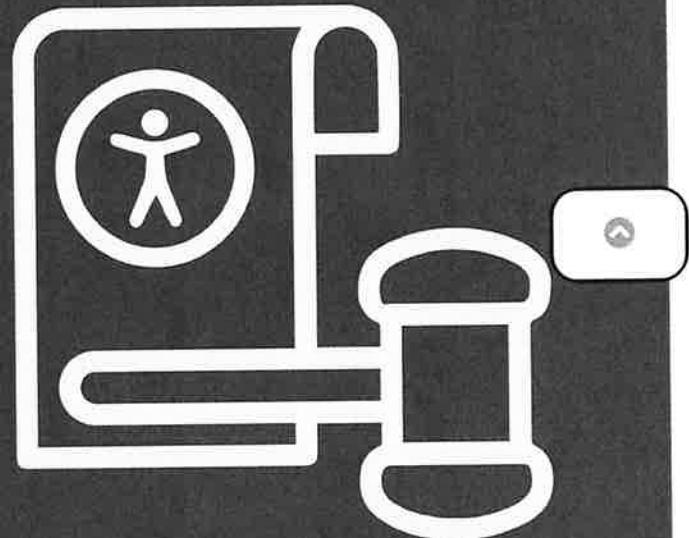
A Brief Guide on Current State of Web Accessibility Lawsuits

For companies, website designers, and site owners, online accessibility has become increasingly vital. Ensuring that people with disabilities can navigate the web without hindrance is
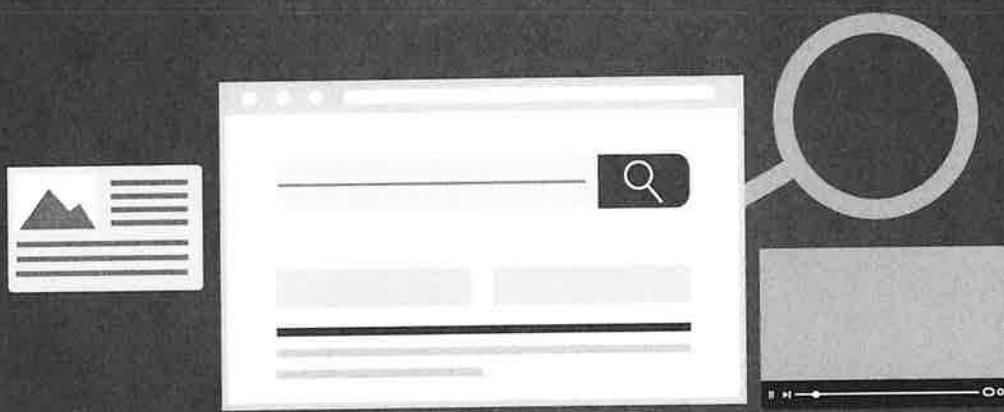
How do People with Disabilities Use the Web?

How do Individuals with Disabilities Use the Web?

Individuals facing vision challenges rely on screen readers, and those experiencing mobility issues find assistance through voice recognition software for web access. Captions and transcripts

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Approved Meeting Minutes

Public Body Procurement Workgroup

Meeting # 1

Wednesday, July 17, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting began with remarks from Gill, followed by a recap of the 2023 work accomplished by the Workgroup, a review of the proposed work plan for 2024, presentation of HB 1355 by Delegate Kathy K.L. Tran, public comment, and discussion by the Workgroup members. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), JoWanda Rollins-Fells (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), and Rebecca Schultz (Division of Legislative Services). Leslie Haley with the Office of Attorney General was not in attendance.

I.   Call to Order; Remarks by Chair

Sandra Gill, Deputy Director
Department of General Services

Gill called the meeting to order and thanked the House Clerk's Office for their continued support in allowing the Workgroup to hold its meetings in the House Subcommittee Room. She shared that she will serve as the designee for the director of the Department of General Services, Banci Tewolde, on the Workgroup this year and thanked the Workgroup for their commitment to serve and share their expertise as the Workgroup works through studying the issues before it. Lastly, she noted that the meeting materials

are provided at the meeting, ahead of the meeting via email, and posted on the PWG website.

II.   Introduction of Workgroup Members, Representatives, and Staff

The Workgroup members, representatives, and staff shared their name and entity they will represent on the Workgroup this year.

III.   Approval of Meeting Minutes from the September 14, 2023 Workgroup Meeting

Saunders made a motion to approve the meeting minutes from the September 14, 2023 meeting of the Workgroup. The motion was seconded by Heslinga and unanimously approved by the Workgroup.

IV.   Recap of 2023 Work and Overview of Proposed 2024 Work Plan

Next, Gill asked staff to present a recap of the work accomplished by the Workgroup in 2023, as well as the proposed work plan for the Workgroup's 2024 studies.

Jessica Hendrickson began with a recap of the bills assigned to the Workgroup in 2023, stating that over the course of eight meetings, the Workgroup reviewed and provided recommendations on four bills. She provided a summary of the work undertaken by the Workgroup related to SB 272 (Hashmi 2022), SB 912 (Ruff 2023), SB 954 (Petersen 2023), and SB 1115 (DeSteph 2023). Hendrickson noted that recommendations provided by the Workgroup influenced various bills that were introduced and passed by the General Assembly during the 2024 session.

Moving to the proposed 2024 work plan, Hendrickson provided an overview of the four new bills that are before the Workgroup for study: HB 1355, patroned by Delegate Tran; SB 492, patroned by Senator Stanley; HB 1524, patroned by Delegate Lopez; and HB 1404, patroned by Delegate Ward. She stated that the proposed work plan includes tentative dates for six additional meetings for the workgroup to complete its studies of these four bills.

V.   Presentation on HB 1355

Delegate Tran began her remarks by stating she began working on this issue in 2021 when a constituent raised the concern over accessibility challenges her son faced at elementary school. The school used a web based application in math lessons, which was not accessible, therefore her son was unable to fully engage in the lessons. When schools use web based applications that are not accessible, it requires teachers to create separate lesson plans and assignments which also puts the child in a situation that is different from the other children in the classroom. Delegate Tran shared that her constituent ultimately withdrew her son from public school as his needs were not being met by the continued use of the inaccessible web based application and that HB 1355 is meant to modernize

the ITAA and ensure that accessibility needs are being met in K-12 schools and across all levels of state government.

Next, Delegate Tran provided an overview of the ITAA, stating that it requires state agencies, institutions of higher education, and local governments to ensure that technology is visually accessible to the public, and employees. The ITAA currently allows for exemptions in cases where meeting the accessibility requirements will cost more than the total cost of the procurement by five percent. She shared that the exemptions are required to be reported to the Secretary of Administration annually.

Delegate Tran shared that the ITAA has not been substantially updated since 1999. She shared that technology impacts everything, from how we learn to how we do our jobs and it is important that our laws are updated to reflect the changes in the use of technology and also the recognition that other disabilities, in addition to visual disabilities, are impacted if technology is not accessible. Delegate Train stated that she wants to ensure that the Virginia Code is in compliance with the Americans with Disabilities Act (ADA) and the Human Rights Act and feels that HB 1355 will move Virginia in that direction.

Next, Delegate Tran provided an explanation of HB 1355 stating that it expands ITAA to cover all disabilities, not just visual, providing hearing disabilities as an example of an additional disability that would be covered with the passage of HB 1355. HB 1355 expands the covered entities to include K-12 schools and requires the Secretary of Administration create an information and communication technology access clause that would require vendors to produce an accessibility conformance report. The conformance report is created by the vendor and many vendors currently do this as industry standard practice. The ITAA currently requires an annual report which HB 1355 would eliminate. HB 1355 states that if a vendor cannot meet the accessibility requirements within twelve months then the vendor may be required to refund the agency or the contract can be cancelled. The bill creates a process by which agencies are able to purchase technology that does not meet the accessibility requirements and requires an alternative plan to meet accessibility needs, if such need arises.

Delegate Tran shared that under HB 1355, state agency heads are permitted to designate an employee to serve as the digital accessibility coordinator. She shared that some stakeholders were concerned about how the bill would impact smaller localities, which resulted in adding an exemption for localities with a population under 50,000 people.

HB 1355 is seeking to shift compliance with the ITAA from being done entirely by covered entity to a shared responsibility between covered entity and vendor. Delegate Tran stated that a lot of technology used today is accessible and covered entities are already moving towards more accessible technology because constituents, students, and the public need it, sharing that the most costly aspects of the ITAA, visual accessibility, is already covered by the ITAA. She stated that state government is already heading in this direction and approved several million dollars in the budget to ensure language access and accessibility for people with disabilities.

Lastly, Delegate Tran shared that she has worked with some of the Workgroups organizations over the last couple of years and worked hard to accommodate a diverse level of interests. She stated that she appreciates the Workgroup for taking this on and encourages the members to engage the partners on the disability advocacy side.

VI.   **Public Comment on HB 1355**

Public comments in support of HB 1355.

The first stakeholder to comment was Bonnie O'Day, Legislative Chair for National Federation of the Blind of Virginia. O'Day began by stating that HB 1355 modernizes the ITAA by defining procedural steps that government must take to better ensure technology that is accessible to, and usable by people with disabilities, is purchased. She stated that although there has been a lot of progress in the last several years, government agencies including higher education are not following current federal guidelines, resulting in inaccessible technology being purchased. The Federal DOJ has promulgated a new rule on web content and mobile applications that are provided by state and federal government under Title 2 of ADA, explaining that these regulations provide timelines of compliance for jurisdictions with different populations, but do not exempt cities and towns with a population of less than 50,000. Virginia local counties, municipalities, and schools are falling short of meeting their obligations under the old regulations which are many years out of date. She stated that the lack of compliance has led to a significant impact on students, employees, and general public in their need to access education materials, earn a living, and participate in civic activities. O'Day shared concerns that state and local governments have been unable to comply with the old regulations and may have difficulty fully complying with the new regulations. She shared that the new bill is intended to set forth procedural steps to obtain compliance while shifting the workload onto the software community to prove that they are providing accessible software in compliance with the law. The new Title 2 regulations make it more clear that Virginia needs these procedural steps that shift the onus onto software vendors and provide a way for government organizations to ensure compliance. She stated that she is not sure why cities and counties are claiming costs over one million dollars in order to implement this legislation when they claim to be and should have been in compliance for many years. She concluded her remarks expressing the need to hear options to making accessibility a factor in technology purchasing decisions. Heslinga noted O'Day's comment regarding the differences between the bill and federal law, in particular that federal law does not allow for localities under 50,000 people to be exempt, and asked if there are other ways that the bill differs from federal law. O'Day and Delegate Tran responded that federal law provided additional time for localities under 50,000 people to comply.

The second stakeholder to speak was Christine Neuber, an IT accessibility coordinator, representing the Virginia Higher Education Accessibility Partners (VHEAP). She began by sharing that through the process of working through what is needed to ensure IT accessibility, one of the biggest issues when reviewing software is that there is not a lot of software available that is fully accessible. Noting that with federal standards and any other requirements it has been difficult to ensure accessibility. Neuber stated that the bill

allows us to shift the responsibility to the vendor to prioritize accessibility which will allow more accessible options to choose from. She shared that she wants to make sure that we are working across universities to help them comply with standards and meet the needs of students, including K-12 and expressed the importance of different agencies holding vendors to the same standards and ask for the same needs when it comes to technology. Neuber shared an example where one vendor will say that something she is asking for is not something they have been asked to provide by other agencies, making it challenging for both the agency and vendor, so consistency would be beneficial.

Public comments in support or oppose in part.

The first stakeholder to speak was Gerrit VanVoorhees on behalf of the Virginia Local Government Information Technology Executives (VaLGITE), established in 1996 and represents 83 percent of all localities in Virginia with a population above 2,000. VanVoorhees shared that he believes in broadening accessibility to the citizens we serve and shared that the way HB 1355 is written, it could negatively impact access to services. He stated that in February, VaLGITE provided a letter to PWG which cited the areas of concern in the bill, such as (i) overly broad definitions, specifically for digital accessibility and information and communications technology, (ii) duplication of federal standards, specifically ADA and section 508 of the rehabilitation act, and (iii) the lack of sufficient funding to implement the changes. VanVoorhees expanded on these concerns, stating that the proposed definition of digital accessibility includes the design of electronic documents, websites, applications, hardware, video, audit, kiosks, copiers, printers, and other digital tools, and allows for integration and use of assistive technology such as screen readers, braille displays, and alternative input devices, to achieve necessary levels of access. He shared an example of a kiosk that is used in social services, stating that in order to comply with this, they would be required to possibly attach something to their network which could expose sensitive information, which is a big concern. He shared concern that this bill could result in entities removing technology modernization if unable to comply with the laws. He finalized his remarks by inviting anyone who wishes to have further discussion on this, without overburdening local government or duplicating existing federal laws, to reach out and continue the conversation.

The second stakeholder to speak was Clifford Shore, the Vice President of the Virginia Association of State College and University Purchasing Professionals (VASCUPP) and the Chief Procurement Officer (CPO) for George Mason University (GMU). Shore shared that VASCUPP supports in part updating the ITAA requirements to more closely model federal 508 requirements and that they have several suggestions on how to modify the bill to ensure its success in the upcoming session while simultaneously adjusting the language to reduce the fiscal impact to all agencies. First, he suggested removing the language that describes mandatory penalties for vendors that are not in compliance within twelve months. He shared that currently, the average contract at GMU has between 50-250 individual clauses which cover very significant issues that are no more or no less important than accessibility. As an example, Shore stated that each contract requires that contractors show compliance with the federal civil rights act, Virginia fair employment

act, ADA, payment card requirements, security standards, European data security standards, FOIA, and more. He pointed out that most contractual clauses, with few exceptions, do not have their own penalty. He continued by explaining that the average clause explains in the contract what the requirements are between the contractor and the agency and if the contractor is not in compliance, the contractor is in breach, and breach has its own remedies within the contract, which can lead to debarment, cancellation of the contract, and other potential damages that agencies can seek. This bill, however, requires its own consequences language, which vendors will interpret as a penalty and which will be difficult to get vendors to agree to. Shore suggested (i) that the penalty clauses be removed and that procurement not serve as the entity to get penalties from the vendors, (ii) that the bill specifically incorporate the current exemptions that exist under federal 508 law (there are currently five pages of various exemptions that are available), and (iii) the bill, to the extent possible, be modified so agencies can specifically address the software that impacts people that need accessibility the most, such as public facing, or outward facing to students should be top priority. He concluded his remarks by stating that the majority of software that GMU uses is not public facing and is not used by students, therefore it would be useful to determine how to prioritize or exclude cases where no user requires accessibility and the technology has a limited subset of users.

VII. Discussion

Heslinga thanked Delegate Tran and the stakeholders that commented on the bill before the Workgroup, sharing that this is an important bill with critical matters that are important to everyone and has a broad impact. He stated that he would like to hear from more communities and stakeholders with their thoughts on this bill so we can make best possible findings and recommendations.

Peeks echoed Heslinga and thanked Delegate Tran for bringing this bill forward and explaining that what the bill is seeking to do is important and appreciates the information shared and what could be worked on so the bill can reach a consensus and start to find solutions. She provided a recap of the points that she heard are of concern; (i) the definition itself of information and communications technology, (ii) if the technology is public vs employee facing (public including students), and (iii) that the Workgroup received a letter speaking about misalignments between state and federal statutes. Peeks expressed the need to understand if the bill should incorporate ADA in regards stated that she is not sure if the bill would need to incorporate ADA or if ADA covers employees who have a right to accommodations in the workplace on its own. Peeks asked the Workgroup if there were other considerations shared that need to be focused on, and Gill added that VASCUPP suggested removing the penalty from the bill because contracts have other mechanisms for dealing with breach and that it would be helpful to state the exemptions or incorporating them in some way into Virginia's code.

Gill asked if the Workgroup would like staff to explore what other states are doing and asked the audience to send any information to the PWG so we can incorporate all of the information into the next meeting.

Tweedy asked for more information on what the ADA and Section 508 of the Rehabilitation Act require, and how that relates to the bill and how the bill is trying to align or supplement it. He stated that the bill expands more into K-12 than it currently does, and asked if there are specific K-12 stakeholders that we can invite to share their input? Innocenti agreed to engage local government K-12 and obtain more input.

Heslinga concluded the Workgroups discussion by stating that someone touched on the remedies side of public contracting and whether this should be approached in a different way. He shared that it is important for people to voice a concern and that it's not clear to him what the relationship is between that and other legal rights or remedies and how that would work.

VIII.   Adjournment

Gill adjourned the meeting at 1:45 p.m. and noted that the Workgroup's next meeting is scheduled for August 6, 2024 at 10:00 a.m.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix C: August 6, 2024, Meeting Materials

This appendix contains the meeting materials from the August 6, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
   a. Department of Education Assistive Technology Overview
   b. Department of Education Virginia Assistive Technology, Tools, and Strategies: Consideration and Assessment Guidance Document
   c. Virginia IT Agency Website Modernization Program and Accessibility presentation
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

Meeting # 2
Tuesday, August 6, 2024, 10:00 a.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I.   **Call to Order; Remarks by Chair**

II.   **Approval of Meeting Minutes from the July 17, 2024 Workgroup Meeting**

III. **Presentation on SB 492**
      The Honorable William M. Stanley, Jr.
      Senate of Virginia

IV.   **Public Comment on SB 492**

V.   **Workgroup Requested Presentations on HB 1355**

VI.   **Public Comment on HB 1355**

VII. **Discussion**

VIII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff
Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS
Kimberly Freiberger, Legislative Analyst, DGS

Assistive Technology

Overview

Assistive technology (AT) can help ensure that all students with disabilities receive a free appropriate public education (FAPE) by allowing access to the general education curriculum and settings, providing opportunities for meaningful social interactions, and facilitating progress toward their educational goals. Assistive technology can significantly impact independence, communication, self-expression, self-esteem, and overall quality of life.

What is Assistive Technology?

Assistive technology is any technology used by individuals with disabilities who may otherwise not be able to or would not be able to perform a task as well without the technology. Assistive technology includes both the devices (communication devices, apps, extensions, hardware, software, mobility devices) and the services provided to access and implement the devices. Assistive technology consists not only of high-tech devices such as laptops, environmental control devices, or electric wheelchairs, but also low-tech devices such as pencil grips, schedules, or laminated communication boards. Assistive technology must be considered for all students with a disability regardless of disability identification.

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device (34 CFR §300.5).

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device (34 CFR §300.6). The term includes:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ or are otherwise substantially involved in the major life functions of that child.

Virginia's State Technology Plan

The Board of Education maintains a six-year plan to integrate educational technology into the Standards of Learning and the curricula of the public schools in Virginia. Incorporation of assistive technologies are addressed in the 2018-2023 Educational Technology Plan for Virginia to support all students and addressed specifically to address learning, teaching, and infrastructure required to support such technologies.

Virginia Assistive Technology, Tools, and Strategies (VATTS)

1. VATTS: Consideration and Assessment Guidance Document (PDF)- Guidance for school divisions in the consideration and assessment of AT, including planning and implementing those services for students with disabilities.
2. VATTS: Consideration Guide (PDF)– Designed to organize data and facilitate the decision-making process for the consideration and assessment of AT, other technology tools, and strategies that may be required by the student.
3. VATTS: Instructions and Definitions (PDF)- Provides instructions for completing the VATTS: Consideration Guide as well as definitions for many of the terms used within the document.
4. VATTS: Resource Guide (PDF)- Provides instructional strategies, AT solutions, modifications, accommodations, and examples used to address areas of need identified through the AT consideration process to support student success.

Resources

- Assistive Technology Network – The Virginia Department of Education's (VDOE's) Assistive Technology (AT) Network is a dynamic group of AT Specialists representing the VDOE Training and Technical Assistance Centers (TTACs), Virginia Commonwealth University-Autism Center for Excellence (VCU-ACE), and Accessible Instructional Materials Center of Virginia (AIM-VA). The AT Network supports VDOE priorities in providing training and resources includes the following:
  - AT consideration and assessment
  - AT implementation and decision-making
  - Augmentative and augmentation communication (AAC)
  - Development and support of school division Assistive Technology Teams
  - Development of school division policies and procedures related to AT
- Assistive Technology Tools in Schools (PDF) - This guide is designed to support professionals and families in understanding AT and identifying possible AT tools for students from preschool through high school.
- Guidelines for School Division Transfer of Assistive Technology Devices (Word) These guidelines outline requirements and best practices related to the transfer of assistive technology between two parties. This document provides an overview of the requirements related to the transfer of assistive technology as well as sample forms for use when developing transfer agreements.
- Accessible Instructional Materials Center of Virginia (AIM-VA) - AIM-VA provides accessible instructional materials to eligible Virginia K-12 students who have an Individualized Education Program (IEP). Accessible

instructional materials are alternate print materials, (e.g., braille, electronic files) used by students who are not able to use traditional print formats.

Virginia Assistive Technology, Tools, and Strategies:

Consideration and Assessment Guidance Document

VIRGINIA DEPARTMENT OF EDUCATION

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Acknowledgments

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- Virginia Assistive Technology, Tools, and Strategies: Consideration and Assessment Guidance Document
- Virginia Assistive Technology, Tools, and Strategies: Consideration Guide (Accessible Guide)
- Virginia Assistive Technology, Tools, and Strategies: Consideration Guide (Interactive Guide)
- Virginia Assistive Technology, Tools, and Strategies: Resource Guide (Accessible Guide)
- Virginia Assistive Technology, Tools, and Strategies: Resource Guide

In addition, the Virginia Department of Education acknowledges input from national experts in the field of assistive technology.

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- Danville City Public Schools
- Dinwiddie County Public Schools
- Fairfax County Public Schools
- Fluvanna County Public Schools
- Gloucester County Public Schools
- Greensville County Public Schools
- Hampton City Public Schools
- Hanover County Public Schools
- Harrisonburg City Public Schools
- Henry County Public Schools
- Hopewell City Public Schools
- Isle of Wight County Public Schools
- Lee County Public Schools
- Loudoun County Public Schools
- Lynchburg City Public Schools
- Martinsville City Public Schools
- Mecklenburg County Public Schools
- Montgomery County Public Schools
- New Kent County Public Schools
- Newport News Public Schools
- Norfolk City Public Schools
- Orange County Public Schools
- Petersburg City Public Schools
- Prince William County Public Schools
- Pulaski County Public Schools
- Richmond County Public Schools
- Roanoke City Public Schools
- Russell County Public Schools
- Shenandoah County Public Schools
- Southampton County Public Schools
- Staunton City Public Schools
- Suffolk City Public Schools
- Surry County Public Schools
- Waynesboro City Public Schools
- Wise County Public Schools

Introduction

This document is intended to be used by school divisions as guidance for the consideration and/or assessment of assistive technology (AT), including planning and implementing AT services for students with disabilities. This document should be used in conjunction with and does not replace federal or state regulations.

This document also includes information on Universal Design for Learning (UDL), educational technology (ET), and accessible instructional materials (AIM). Each provides a comprehensive structure for designing, planning, and implementing inclusive instructional environments to meet the needs of all learners through the inclusion of assistive technology.

What is Assistive Technology?

Assistive technology is any technology used by individuals with disabilities who may otherwise not be able to or would not be able to perform a task as well without the technology. Assistive technology includes both the devices (communication devices, apps, extensions, hardware, software, mobility devices) and the services provided to access and implement the devices. Assistive technology consists not only of high-tech devices such as laptops, environmental control devices, or electric wheelchairs, but includes low-tech devices such as pencil grips, schedules, or laminated communication boards. Assistive technology must be considered for all students with a disability.

When Individualized Education Program (IEP) Team members are knowledgeable about assistive technology, the benefits, and the laws impacting AT use, it increases the likelihood of effective AT identification, implementation, and progress throughout the student's school years. For this reason, IEP Team members should have awareness of commonly used AT; how to consider, identify, and trial appropriate assistive technology; where to go for additional information and support; and how to embed AT into the student's IEP and instructional program.

Universal Design for Learning

Universal Design for Learning (UDL) is a *"framework to guide the design of learning environments that are accessible and challenging for all. Ultimately, the goal of UDL is to support learners to become "expert learners" who are, each in their own way, purposeful and motivated, resourceful and knowledgeable, and strategic and goal-driven. UDL aims to change the design of the environment rather than to change the learner. When environments are intentionally designed to reduce barriers, all learners can engage in rigorous, meaningful learning"* (Center for Applied Special Technology, 2018).

The principles of UDL are increasingly present in developing technologies and learning environments and are an important starting point when designing learning environments for all students. Professionals can intentionally design environments that are accessible and challenging for all by providing multiple means of engagement, multiple means of representation, and multiple means of action and expression without lowering curriculum

expectations. Students with disabilities benefit from this proactive educational design, in addition to their specially designed instruction, accommodations, and modifications, to fully participate and benefit from instruction.

Technology and digital media are important in UDL because they can offer teachers the tools for providing varied materials and resources. For example, when using a computer, students can manipulate the style and size of text; change the background color; have text read aloud; add sound; hyperlink to resources; vary input through options such as alternate keyboards, voice recognition, or a switch; and connect to a variety of peripherals (e.g., braille printer). When lessons have been prepared through a single type of classroom media such as traditional paper and pencil worksheets, textbooks, and whiteboards, it becomes difficult to make those materials accessible to learners who cannot see them, use their hands to manipulate them, or decode and comprehend the information written on them. Although very beneficial to many students in the learning environment, these static materials may be barriers to learning for many individuals with disabilities as the tools cannot be modified to accommodate individual learning needs. Technology and digital media can help to reduce these barriers and ensure access to instruction for all students, including students with disabilities.

Learn more about Universal Design for Learning and designing learning environments to meet the needs of all students by exploring additional resources on the VDOE's website.

Educational and Instructional Technology

Educational technology (ET) is all technology for teaching and learning and includes technology that benefits a wide array of learners (Israel & Williams, 2022). Educational technologies typically include general technology, such as multimedia presentations or browser extensions, as well as content-specific technology, such as graphing calculators or digital graphic organizers.

The VDOE uses the term educational technology rather than instructional technology (IT). Some school divisions in Virginia may use the term "instructional technology." In this guidance document, ET and IT will be used synonymously.

The 2018-2023 Educational Technology Plan for Virginia (Virginia Department of Education, 2018) is the latest revision of the long-range technology plan adopted by the Virginia Board of Education to support its Comprehensive Plan. The focus of the plan has remained relatively consistent over the years, especially the emphasis on integrating technology into the classroom.

The technology referenced within the educational technology plan includes technology for all students with increased emphasis on personalized learning. Along with the needs of typical students, addressing the diverse needs of exceptional students is important.

Educational technology includes any type of technology or strategy that is used in the teaching and learning process. Technology does not automatically become assistive technology when used by a student with a disability unless it is required by the student to

make educational progress or access a free appropriate public education (FAPE). In most cases, if the student with a disability is accessing or applying ET in the manner or method typically used by their peers as part of the learning environment, the technology would not be considered assistive technology. For example, if all students in a class are using scientific calculators to complete an assignment, including two students who have learning disabilities in the area of reading and do not require the calculator to access FAPE, the scientific calculators are not assistive technology.

Technology is considered assistive technology if the student with a disability would be less able or unable to independently participate in a task or independently access the resources in the environment relevant to their IEP goals without the technology. Additionally, if a student's use of technology requires a modification or accommodation to how it is typically used, then the technology and the adaptation would be considered assistive technology. This includes many of the educational tools that are provided as part of the typical resources for classroom instruction. For example, voice dictation features are often utilized in today's classrooms as ET for all students. Voice dictation may also be considered an AT option for some students with disabilities who have difficulty writing if the use of this technology increases, maintains, or improves the functional capability of writing. Teams may ask, "What would happen for the student if this tool was taken away?" to help decide if the educational technology may be assistive technology for that student.

If a student with a disability requires access to this technology to access FAPE, the technology should be documented within the student's IEP. This includes both low- and high-tech technology.

Accessible Instructional Materials

Students who are not able to use traditional print formats require accessible instructional materials (AIM) to access the same curricula as other students. Accessible instructional materials refer to print-based educational materials that are converted into specialized formats (e.g., braille, large print, audio, and digital text) and are required for students with IEPs to access their educational program. While this definition of AIM specifically focuses on the specialized formats of braille, large print, audio, and digital, many formats cannot be used without additional assistive technology. Effective use of AIM requires ensuring compatibility between the needed formats and the software and hardware required to access these materials, such as for text-to-speech programs.

The Accessible Instructional Materials Center of Virginia (AIM-VA) is a service of the Virginia Department of Education through a grant to The Helen A. Kellar Institute for Human disAbilities at George Mason University. The AIM-VA offers a statewide library system for providing accessible educational media under the standards set by the National Instructional Materials Accessibility Standards (NIMAS) at no cost to local educational agencies. These materials are available to Virginia K-12 students who meet the federal and state requirements for having print disabilities and are identified as needing accessible educational media within their IEP, as required under Part B of IDEA. School divisions should follow local processes and

protocols for identifying students who qualify for AIM and for requesting the appropriate materials from AIM-VA.

Additional information about the Virginia Department of Education's policy and protocols related to accessible instructional materials in alternate formats are available on the VDOE website.

Compliance with Regulations

The *Technology-Related Assistance for Individuals with Disabilities Act of 1988* first defined assistive technology devices and assistive technology services. These definitions were adopted in the 1990 authorization of *Individuals with Disabilities Education Act* (IDEA) and have remained in subsequent re-authorizations.

Assistive technology device was defined by IDEA 1997 as "any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability." This definition was clarified in the 2004 revision of IDEA to include, "The term does not include a medical device that is surgically implanted, or the replacement of such device" (34 CFR §300.5).

Assistive technology service is defined as "any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device" (34 CFR §300.6).

These services include:
- The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment.
- Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities.
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing AT devices.
- Coordinating and using other therapies, interventions, or services with AT devices, such as those associated with existing education and rehabilitation plans and programs.
- Training or technical assistance for a child with a disability or, if appropriate, that child's family.
- Training or technical assistance for professionals, including individuals providing education or rehabilitation services; employers; or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

To ensure the consideration of AT needs in non-academic settings, the IEP must address educational needs apart from progress in the general curriculum. This includes the consideration of "supplemental aids and services" in which such supports can be provided not

only in regular classrooms but also "in other educationally-related settings." This may include work-based learning experiences, community-based instructional opportunities, social opportunities, and others as deemed appropriate by the IEP Team.

Consideration of devices and services should include, but not be limited to, the following areas of need, which are also defined in Appendix A:

- Communication
- Auditory Processing
- Reading
- Mechanics of Handwriting
- Written Composition
- Spelling
- Math
- Behavior
- Sensory Processing
- Sensory: Vision and/or Hearing
- Recreation, Leisure, and Adaptive Play

- Executing Functioning
  - Study Skills
  - Organization Skills
  - Self-Regulation and Attention
  - Task Completion
- Technology Access
- Environmental Controls
- Positioning, Seating, Mobility
- Activities of Daily Living
- Vocational Skills

The IDEA 2004 (34 CFR §300.324 (a)) requires that all IEP Teams consider the need for assistive technology for students with a disability to access FAPE. The consideration for the need for AT must be documented within each student's IEP. This consideration should be documented under the summary of considerations as well as other areas within the IEP, as appropriate. Consideration of AT should be based on data collected and analyzed by the team, not based on opinion.

Teams must consider the need for assistive technology to access FAPE in the least restrictive environment (LRE) through (1) special education services (including goals and specialized instruction), (2) related services, and/or (3) supplementary aids and services (34 CFR §300.105). As with other IEP decisions, consideration of and decisions regarding the need for assistive technology should be determined on a case-by-case basis and meet the individual need(s) of each student.

If the IEP Team determines the student does not require the use of assistive technology solutions for any of the areas listed above, the team will document this under the summary of considerations. The consideration process is complete at this time but should be considered as part of the development of any future IEPs and as part of the problem-solving process if adequate progress is not being made or additional concerns arise.

If the IEP Team determines the need for assistive technology, the data used to determine this decision, as appropriate, should be documented under the summary of considerations and discussed within the Present Level of Academic Achievement and Functional Performance (PLAAFP). This may include current AT solutions that data show is effective for the student. The full range of identified services and/or accommodations, including both low- and high-tech technology, must also be documented within the IEP.

Consideration of Assistive Technology

Consideration and assessment differ in terms of depth and duration. Consideration of AT devices and/or services is intended to be a shorter discussion that takes place during the IEP meeting to determine whether or not current AT and strategies are adequate. Although a less rigorous process, consideration of AT is a careful and thoughtful discussion of the student (including both their abilities and needs), the environment, tasks, and how tools (both devices and services) can support the student in accessing FAPE and reaching their goals. In the consideration process, teams use already existing data (and results of AT trials, as appropriate) to identify AT devices and/or services that are required by the student to access FAPE. Consideration of AT should include a continuum of both low- and high-tech options. Teams should also consider AT needs within and outside of the school setting, including extra-curricular activities.

Quality Indicators for Consideration of Assistive Technology Needs

The Quality Indicators for Assistive Technology Services (QIAT) (Quality Indicators for Assistive Technology Services, 2021a) outlines components of strong AT consideration processes during IEP development and should be referred to as part of any consideration of assistive technology needs. School divisions may also use these indicators to drive systemic support for assistive technology. These indicators are also appropriate for students who qualify for services under other legislation such as Section 504.

1. Assistive technology devices and services are considered for all students with disabilities regardless of type or severity of disability.
2. During the development of an individualized educational program, every IEP Team consistently uses a collaborative decision-making process that supports systematic consideration of each student's possible need for assistive technology devices and services.
3. The IEP Team members have the collective knowledge and skills needed to make informed assistive technology decisions and seek assistance when needed.
4. Decisions regarding the need for assistive technology devices and services are based on the student's IEP goals and objectives, access to curricular and extracurricular activities, and progress in the general education curriculum.
5. The IEP Team gathers and analyzes data about the student, customary environments, educational goals, and tasks when considering a student's need for assistive technology devices and services.
6. When assistive technology is needed, the IEP Team explores a range of assistive technology devices, services, and other supports that address identified needs.
7. The assistive technology consideration process and results are documented in the IEP and include a rationale for the decision and supporting evidence.

Virginia Assistive Technology, Tools, and Strategies: Consideration Guide

The Virginia Assistive Technology, Tools, and Strategies (VATTS): Consideration Guide (2022) is designed to facilitate a meaningful decision-making process that ensures compliance with regulations as well as the quality indicators related to AT devices and services. While not

required, the VATTS: Consideration Guide can help to ensure that the AT consideration process is in line with best practices and fully explores the student's strengths and needs; the environments in which the student lives, works, and plays; the tasks the student will need to complete; and the potential tools that are needed to address challenges. In addition, the VATTS: Consideration Guide extends the conversation beyond assistive technology and includes discussions about other technology tools and strategies that may benefit the student. The Student, Environment, Tasks, and Tools (SETT) process is an established model for AT consideration and decision-making. The SETT Framework is embedded within the VATTS: Consideration Guide to assist the team in organizing existing data to help the team make informed decisions about possible AT devices and/or services.

SETT Framework for Decision-Making

The SETT Framework provides structure to the consideration and/or assessment of assistive technology. The SETT Framework may also be used to assist in identifying potential AT solutions while preparing for upcoming IEP meetings, reporting progress, and brainstorming possible technology tools and strategies for all students. A teacher or team may choose to use the VATTS: Consideration Guide to help organize existing data and information related to a student's preferences, strengths, and needs. When used in this context, the team is not gathering any new data without parental consent.

The SETT Framework is built on the premise that in order to develop an appropriate system of assistive technology devices and services, teams must first gather information about the student, the customary environments in which the student spends his time, and the tasks that are required for the student to be an active participant in the teaching and learning processes to identify the required AT tools based on the student's task(s) and need(s). Teams are encouraged to utilize the SETT Framework to enhance discussions around potential AT solutions for each area identified as a need. For many students, each area of consideration will be unique depending on multiple factors influencing progress.

For each of the areas identified for the student potentially requiring assistive technology, the IEP Team should gather information related to the student, the environment, and the tasks completed in those environments.

- **Student:** Describe the student's strengths and needs related to the area(s) of concern.
- **Environment:** Describe the environments (home, school, community); environmental factors, including accommodations and tools; and strategies already in use.
- **Task:** Describe the activities or assignments the student needs to complete. This may include challenges related to the current tools and strategies in place.

Based on the information gathered and discussed, teams should identify the tools that the student needs to perform these tasks in those environments. Different tools may be required in different environments and/or for different tasks.

- **Tools:** Describe the features/characteristics of potential tools needed to address the challenges.

The following prompts may be used by teams to help facilitate conversation in identifying needed assistive technology. These prompts are expected to encourage discussion rather than to be complete and comprehensive.

Student
- What is the functional area(s) of concern?
- What does the student need to be able to do that is difficult or impossible to do independently at this time?
- Special needs (related to area of concern)
- Current abilities (related to area of concern)

Environments
- Arrangement (instructional, physical)
- Support (available to both the student and the staff)
- Materials and equipment (commonly used by others in the environment)
- Access issues (technological, physical, instructional)
- Attitudes and expectations (staff, family, others)

Tasks
- What specific tasks occur in the student's natural environment that enables progress toward mastery of IEP goals and objectives?
- What specific tasks are required for active involvement in identified environments (related to communication, instruction, participation, productivity, and environmental control)?

Tools
In the SETT Framework, "Tools" include devices, services, and strategies. Analyze the information gathered on the Student, the Environments, and the Tasks to address the following questions and activities.
- Is it expected that the student will not be able to make reasonable progress toward educational goals without AT devices and services?
- If yes, describe what a useful system of AT devices and services for the student would be like.
- Brainstorm tools that could be included in a system that addresses student needs.
- Select the most promising tools with needed device features for trials in the natural environment. Plan the specifics of the trial (expected changes, when/how tools will be used, cues).
- Collect data on effectiveness.

After discussing the unique considerations for each identified area of concern, the team will analyze the gathered data and use it to make an informed decision on each instructional area identified as a need. Teams may identify that no AT is needed, that the current AT is sufficient, or additional assessment data is needed to make an informed decision.

Summary of Consideration

Different team decisions may be made as a result of the AT considerations process. Include these decisions and the data used to make these decisions within the student's IEP.

The team may decide:
- Existing AT, tools, and strategies are appropriate. Based on existing data, it is anticipated that appropriate progress can be made using existing technology and/or AT. This may also include if the student utilizes universally available educational technology and the team identifies the student's needs for technology to make appropriate progress toward goals. The identified AT is added to the IEP.
- Appropriate AT devices have been identified, but AT services such as customizing, coordinating, training, and/or coaching are needed to support the student, staff, and/or family in implementation. Assistive technology services may also be identified to support the implementation of newly identified AT devices. These services are added to the IEP.
- Trials are needed to identify AT tools. The IEP Team anticipates that appropriate progress cannot be made without the support of AT. The AT devices and/or services are required by the student and will be used for designated tasks in customary environments. The trial process should be documented within the IEP and/or prior written notice as appropriate. The VATTS: Consideration Guide provides space for teams to also document trial plans during their consideration discussion.
- Additional information is needed. The IEP Team determines that further investigation/assessment is needed to determine if or what AT devices and services may be required. The team will specify details and timelines for gathering this information. Refer to the school division's policies for assessment policies. Teams may refer to the Assistive Technology Assessment section in this document for more information.

Implementation Fidelity

To ensure fidelity of implementation, teams should develop a plan for how identified assistive technology devices and/or services will be implemented within the IEP or tried during a trial period. This plan should include:
- the AT tool(s) and/or strategy to be tried;
- the task(s) in which the student will utilize the AT (including where, when, and how);
- who is responsible; and
- proposed implementation dates.

If the team is proposing new AT, part of the plan should also ensure the student is taught how to access and utilize the new AT. Students need to be able to describe the specific educational and assistive technology supports that they use and explain why to ensure that they can advocate for those supports as they move into new classrooms, participate in community-based instruction, and prepare for life after graduation.

Teams should also identify the potential professional learning, including training and coaching, that may need to be provided to ensure fidelity of implementation. This implementation plan should also be developed following the identification of AT devices and/or services following an AT assessment.

Assistive Technology Trial Period

In many instances, the AT implementation dates will align with the implementation dates for the IEP. In some cases, the team may want to try out a device, service, or support for a short period to determine its efficacy before adding it to the IEP. This is known as a "trial period."

A trial period may be recommended when the data suggests the student needs AT to make progress but the team wants to ensure the identified tool is the right fit for the student. If a trial period is recommended, teams should consider the following:
- What is the goal for the student's use of the device?
- How will the team know the trial has been successful (or unsuccessful) in working toward the goal?
- How long will the trial period occur?
- What data will be collected to monitor progress?

Trial data can also be used to drive goals and progress monitoring if the AT is added to the IEP.

When completing a trial, the team should schedule a date to reconvene and review the results of the trials. Teams may decide to implement the AT device or service, not implement the AT, trial an alternatively identified device and/or service to meet the student's needs, or decide additional data is needed. This process should be documented within the IEP and/or prior written notice, as appropriate.

Assistive Technology Assessment

At any point during the consideration process, IEP Teams may decide that further investigation or assessment is needed (i.e., new data) to make an informed decision about whether a student requires AT to be successful in their customary environment, such as the classroom, cafeteria, playground, home, community setting, or workplace. Assessment takes an in-depth look at the student's abilities and difficulties and the demands of the environment and tasks. The AT assessment also includes the acquisition of new information (Reed & Lahm, 2004).

The consideration of assistive technology services requires school divisions to evaluate the needs of a student with a disability, including a functional evaluation of their environment (34 CFR §300.6 (a)). The Federal Register (July 10, 1993) distinguishes between assessment and evaluation as described below.
- Evaluation: A group of activities conducted to determine a child's eligibility for special education.
- Assessment: A group of activities conducted to determine a child's specific needs.

Since IDEA requires that each IEP Team "consider" the student's need for assistive technology, there is no "eligibility" criterion for assistive technology. Assistive technology can be provided to any student with a disability who requires AT to access FAPE. Thus, the purpose of the AT evaluation is to assist in the consideration of the student's need for assistive technology and evaluate what AT is functionally appropriate and effective for the student, not to determine eligibility for services. This functional evaluation of the student in their environment is considered an assessment rather than an evaluation for eligibility.

The SETT Framework can and should be used by teams as part of a more comprehensive AT assessment process to organize both new and existing data to make informed decisions. The process for AT assessment applies many strategies, tools, and checklists. *Assessing Students' Needs for Assistive Technology* (Reed & Lahm, 2004), developed by the Wisconsin Assistive Technology Initiative, and the *Student, Environment, Tasks, Tools (SETT) Framework* (Zabala, 2002) are considered to be two of the leading resources for assistive technology assessment. These materials are provided free of charge, and links to the websites are included in the Appendix.

Quality Indicators for Assessment of Assistive Technology Needs

The Quality Indicators for Assistive Technology Services (Quality Indicators for Assistive Technology Services, 2021b) also outlines practice guidelines for the assessment of AT. These guidelines may be referred to by teams during the assessment process as well as by school divisions in their development and implementation of assistive technology systems, including AT teams. The following seven indicators have been identified by QIAT for assistive technology assessment:

1. Procedures for all aspects of assistive technology assessment are clearly defined and consistently applied.
2. Assistive technology assessments are conducted by a team with the collective knowledge and skills needed to determine possible assistive technology solutions that address the needs and abilities of the student, demands of the customary environments, educational goals, and related activities.
3. All assistive technology assessments include a functional assessment in the student's customary environments, such as the classroom, lunchroom, playground, home, community setting, or workplace.
4. Assistive technology assessments, including needed trials, are completed within reasonable timelines.
5. Recommendations from assistive technology assessments are based on data about the student, environments, and tasks.
6. The assessment provides the IEP Team with clearly documented recommendations that guide decisions about the selection, acquisition, and use of assistive technology devices and services.
7. Assistive technology needs are reassessed any time changes in the student, the environments, and/or the tasks result in the student's needs not being met with current devices and/or services.

Assistive technology assessment is an ongoing continual part of educational planning and not a "one-shot" separate event. The assessment process yields recommendations based on data collected from trials with AT tools used for meaningful tasks in the student's daily environments. Part of this data includes the student's feelings about the proposed AT. Quality AT assessment recognizes and plans for the support that will be needed for family, peers, and teachers to ensure the successful use of a device.

Assistive Technology Assessment Team

Assistive technology assessment can be completed by an IEP Team, provided that someone on the team is knowledgeable about AT assessment. In other cases, identified AT teams may help to support IEP Teams in the AT assessment process. It is recommended that the AT assessment team be comprised of individuals with the collective knowledge and skills needed to determine possible AT solutions that address the needs of the student. According to Reed and Lahm (2004), five core team members should be represented on every team making decisions about assistive technology. This includes:

- a person knowledgeable about the student (this may be the student and/or parents or other family members);
- a person knowledgeable in the area of curriculum, usually a general or special education teacher;
- a person knowledgeable in the area of language, usually a speech/language pathologist;
- a person knowledgeable in the area of motor skills, often an occupational and/or physical therapist; and
- a person who can commit the district's resources, not only for the purchase of devices but to authorize staff training and guarantee implementation in various educational settings, usually an administrator.

Additional team members may include the following:

- Audiologist
- Instructional Technology Specialist
- School and/or Vocational Counselor
- Early Intervention Specialist
- Instructional Assistant
- Nurse
- Physician
- Rehabilitation Engineer
- Social Worker
- Teacher of Hearing Impaired
- Teacher of Visually Impaired
- Behavior Specialist

This is not an exhaustive or prescribed list. Each student's team should be unique and customized to reflect the student's needs and strengths. Anyone who has the potential to contribute to the decision-making or implementation may be invited to participate on the team. When team members share roles and responsibilities and integrate their knowledge and findings, then assistive technology becomes a team responsibility and the AT assessment process does not rely solely on one team member and their area of expertise.

Virginia Assistive Technology, Tools, and Strategies: Resource Guide

The Virginia Assistive Technology, Tools, and Strategies (VATTS): Resource Guide is a resource for IEP Teams to identify tasks within instructional areas as well as potential accommodations, modifications, and AT solutions. This guide aligns with the Virginia Assistive Technology, Tools, and Strategies: Consideration Guide and is provided to assist educational teams in considering assistive technology in the development, review, and/or revision of a student's IEP. While the VATTS: Resource Guide is not an exhaustive list and does not endorse any specific tool or device, the guide does list tools to consider along with all relevant factors related to the student, environment, and tasks to be completed.

Summary

Assistive technology is an essential component of ensuring that students with disabilities receive a free appropriate public education (FAPE) in their least restrictive environment. More than this, assistive technology increases students' opportunities for social interactions and engagement with same-age peers, meaningful postsecondary outcomes and employment, and builds overall independence. Assistive technology can significantly impact graduation rates, postsecondary outcomes, independence, self-expression, self-esteem, and overall quality of life.

Self-awareness, self-advocacy, and self-determination are critical in ensuring that students understand and can advocate for the assistive technology they need. Students must have the opportunity to explore, identify, learn to use, and advocate for needed assistive technology while in school so they have the skills to independently identify and advocate for needed AT (and other) supports in the workplace and community. This starts with quality consideration of assistive technology within the IEP.

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Appendix A: Definition of Terms for Virginia Assistive Technology, Tools, and Strategies Consideration

Activities of Daily Living
Activities oriented towards taking care of one's own body and activities that are essential for survival and well-being. In the school systems, these may be eating, toileting, getting dressed for gym, and mobility around the school (Schell & Gillen, 2009, p. 1153).

Adaptive Play
Adaptive play lets a child with limited function in abilities such as movement, speech, eyesight, hearing, comprehension, or communication play more fully (Persels, 2019, para. 2). It may involve customizing toys, using adaptive equipment, accessing assistive technologies, making new ways to play, and using the setting. Play can be adapted for your child at home, in the community, or while in the hospital.

AIM-VA
Accessible Instructional Materials Center of Virginia (AIM-VA), funded by the Virginia Department of Education, provides accessible instructional materials to eligible Virginia K-12 students who have an Individualized Education Program (IEP) and are unable to access traditional print. Accessible instructional materials, or AIM, refers to print-based educational materials that are converted into specialized formats required by the IDEA (e.g., braille, large print, audio, and digital text). Accessible instructional materials can positively impact student performance.

Assistive Technology Assessment
Assistive technology assessment is a comprehensive and thorough evaluation of the student's needs, their environments, the tasks or goals they are wanting to achieve, and the possible AT tools that may help facilitate these goals (Assistive Technology and Accessible Educational Materials Center, n.d., para. 2). The AT assessment process does not end with tool selection but also includes follow-up and ongoing assessment as tasks and environments change and new tools are developed.

Assistive Technology Device
Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device (34 CFR §300.5).

Assistive Technology Service
Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device (34 CFR §300.6).

Assistive Technology in the IEP

A student's IEP should clearly reflect the AT needed, describe how it will be used, and define the supports required for its use (Pennsylvania Training and Technical Assistance Network, 2021, paras. 6-8). Because appropriate AT devices and services can take various forms for students with broad ranges of academic and functional needs, team members need to understand the various options for thoughtfully considering and including AT in the IEP document. Once considered, as described above, AT devices and services can be appropriately documented in the IEP in several areas. The following sections of the IEP are appropriate locations for documenting AT: special considerations, present levels of academic achievement, transition services, participation in state and local assessments, goals and objectives, related services, supplementary aids and services, program modifications, specially designed instruction (SDI), and/or supports for school personnel. Regardless of where AT appears in the IEP, the IEP document should clearly reflect the AT needed, describe how it will be used, and state the supports required.

Attention

Attention is the cognitive ability to focus on a task, issue, or object (Schell & Gillen, 2009, p. 1154).

Auditory Processing

Auditory processing includes auditory attention, auditory memory, auditory discrimination, auditory figure-ground, and auditory cohesion (Virginia Department of Education, 2020).

Behavior

Assistive technology to support behavior should align with the identified function(s) of any undesired behavior(s) and support context-appropriate behavior and skill development. The AT for behavior may include tools that assist with providing reminders of desired behaviors, self-management, self-regulation, and focusing on the current activity.

Communication

Communication is the active process of exchanging information and ideas (American Speech-Language-Hearing Association, 2013, paras. 1-2). Communication involves both understanding and expression. Forms of expression may include personalized movements, gestures, objects, vocalizations, verbalizations, signs, pictures, symbols, printed words, and output from augmentative and alternative communication (AAC) devices. When individuals communicate effectively, they are able to express needs, wants, feelings, and preferences that others can understand.

Environmental Controls

Environmental controls enable individuals with limited mobility to control activities and events within their environment (Disabilities, Opportunities, Internetworking and Technology, 2022). Environmental control units (ECU) enables an individual with mobility impairments to operate electronic devices in their environment through alternative access methods (e.g., switch or voice access). The ECUs can control things such as lights, televisions, telephones,

music players, door openers, security systems, and kitchen appliances. These systems are also referred to as electronic aids to daily living (EADL).

Executive Functioning
Executive function (EF) is a set of mental skills that help an individual to control their thinking and behavior (Dawson & Guare, 2010). These skills allow an individual to select and achieve goals or to develop problem solutions. Executive function skills include planning, organization, time management, working memory, and metacognition. The EF skills also help individuals guide their behavior toward these goals including response inhibition, emotional control, sustained attention, task initiation, flexibility, and goal-directed persistence.

Grade
Grade refers to the student's current grade level, including preschool. When developing a standards-based IEP, the IEP is directly linked to and framed by Virginia's course content Standards of Learning (SOL) for the grade in which the student is enrolled or will be enrolled (Virginia Department of Education, 2016). If a student is transitioning from Part C to Part B, between grades, programs, and schools, it is important to involve past and current service providers in this discussion. If this student is of transition age (aged 14-21), it is especially important for these students to learn self-advocacy skills, learn about AT, and identify AT that will help increase their success in postsecondary environments.

IEP Team
The IEP Team is the group of individuals who come together to develop a student's Individualized Education Program (IEP). In the context of an IEP meeting, the local educational agency shall ensure that the IEP Team consists of members outlined in §8VAC20-81-110 C (Virginia Department of Education, 2010).

Math
Ability to understand and remember mathematics concepts, rules, formulas, basic computation skills, and sequence of operations (Virginia Department of Education, 2021a, para. 4). Math also includes the ability to perform mathematical calculations and notation.

Mechanics of Handwriting
Handwriting requires the integration of perceptual-motor processes and cognitive processes (Virginia Department of Education, 2017, p. 26). Some characteristics of students having difficulty with handwriting may include poor letter formation; letters that are too large, too small, or inconsistent in size; incorrect use of capital and lower-case letters; letters that are crowded and cramped; incorrect or inconsistent slant of cursive letters; lack of fluency in writing; and incomplete words or missing words.

Organization
Organization refers to skills in the areas of self-organization, information management, time management, and materials management which are the underlying skill set needed to be successful throughout the education process (Wisconsin Assistive Technology Initiative, 2009, p.1).

Participants
Participants in the educational team may include the student, family, related service providers, general educators, special educators, instructional assistants, case manager/service coordinator, administrators, instructional facilitators, and any other person who can help select AT devices and services, instructional technology, and other strategies and resources necessary to receive a free appropriate public education (FAPE) in the least restrictive manner. In the context of an IEP meeting, the local educational agency shall ensure that the IEP Team consists of members outlined in §8VAC20-81-110 C (Virginia Department of Education, 2010).

Positioning, Seating, Mobility
Optimal positioning in a "seating system can provide support to the body to improve skeletal alignment, normalize tone, prevent deformities, and enhance movement" (Cook, et al, 2020, p. 212). "The primary purpose of seating devices is to maximize a person's ability to function in activities across all performance areas" (Cook, et al, 2020, p. 193). Mobility "allows movement that enables function in a seated or standing position" (Cook, et al, 2020, p. 444).

Reading
Reading instruction includes elements that teach five critical areas of literacy: (a) phonemic awareness, (b) phonics, (c) fluency, (d) vocabulary, and (e) text comprehension (Virginia Department of Education, 2017, p. 19). These skills align with the State's English Standards of Learning for Virginia Public Schools.

Recreation/Leisure
Recreation refers to all those activities that people choose to do to refresh their bodies and minds and make their leisure time more interesting and enjoyable (National Center for Biotechnology Information, 2010, paras. 10-11). Examples of recreational activities are walking, swimming, meditation, reading, playing games, and dancing. Leisure refers to the free time that people can spend away from their everyday responsibilities (e.g., work, domestic tasks) to rest, relax, and enjoy life. It is during leisure time that people participate in recreation and sporting activities. The types of recreation, leisure, and sports activities people participate in vary greatly depending on the local context, and tend to reflect the social systems and cultural values.

Self-Regulation
Self-regulation is the ability to adapt emotional expression, behavioral activity level, and attention/arousal level effectively in response to the contextual demands of the environment (Schell & Gillen, 2009, p 1167).

Sensory Processing
Sensory processing may include reception, modulation, integration, and organization of sensory stimuli occurring in the central nervous system. It may also include the behavioral responses to sensory input (Schell & Gillen, 2009, p. 1167).

Sensory: Vision and/or Hearing

Sensory disabilities can involve any of the five senses, but for educational purposes, it generally refers to a disability-related to hearing, vision, or both hearing and vision (Virginia Department of Education, 2021b, paras. 1-2). Sensory disabilities affect access to visual and/or auditory information. Most content information is presented visually and/or auditorily in the classroom. Children experiencing vision and/or hearing loss must be appropriately identified to ensure access to education.

SETT Framework

The acronym SETT is for Student, Environments, Tasks, and Tools. The SETT Framework is a four-part model intended to promote collaborative decision-making in all phases of assistive technology service and design and delivery from consideration through implementation and evaluation of effectiveness (Zabala, 2021). Although the acronym SETT forms a memorable word, it is not intended to imply an order, other than that the student, environment, and tasks should be fully explored before tools are considered or selected.

Spelling

Spelling requires knowledge of sound sequences, letter patterns, and morphemes (base words and affixes (e.g., un-comfort-able)) (Virginia Department of Education, 2017, p. 26).

Strategy

Practices that are used to teach students how to learn and perform (Budin et al., 2022). Strategy instruction builds independence by facilitating students' abilities to be more self-directive in identifying and achieving social, academic, physical, and behavioral goals. This includes the use and training of assistive technology.

Task Completion

The sustained effort, including staying focused and organized, to plan and complete all steps and tasks involved in an assignment or activity.

Team Meeting

During a team meeting, participants may review existing data, discuss a teacher or related service provider's observations or ongoing classroom observations, or review data from the administration of a test or evaluation that is administered to all children or for which parental consent had already been secured. No new data is gathered for these meetings. Teams may identify AT, tools, and strategies to implement or share information to assist the student, staff, or families.

Technology Access

This means individuals with disabilities who cannot control technology with standard tools (e.g., keyboard, standard mouse) engage with and operate devices (e.g., laptops, smartphones, calculators, tablets, audio/visual equipment) with the use of peripheral assistive technology devices (e.g., switches, adapted mice, large keyboards), accessibility features built into the device, or universally designed equipment.

Tools and Strategies
Tools and strategies may include educational and/or instructional materials or evidence-based practices that will support the student in meeting their IEP goals.

Trials
An opportunity is provided for a child to try out assistive technology, instructional technology, or strategies to determine effective solutions. This provides information to the IEP or planning team about the advantages and changes needed to materials or strategies as well as the student's preferences and performance to facilitate further discussions and decisions.

Vocational
Vocational skills address knowledge and skills essential for performing the tasks involved in an occupation including general work skills as well as specific skills related to trade, craft, profession, or role (Skills Portal Skills for Success, 2020). These may include work readiness, interview and job search skills, social and communication skills, career choice, and safety.

Written Composition
Written expression or composing requires the translation of ideas into sentences (Virginia Department of Education, 2017, p. 27). Writing is a complex task that requires several cognitive processes (e.g., planning, working memory) and skills. It requires the ability to read, spell, know the meaning of words, and understand the syntax of the language to compose a written product.

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Website Modernization Program and Accessibility

Josh Jones, Program Lead

Public Body Procurement Workgroup
August 6, 2024 meeting

Overview

Program launched in 2023. More info at https://www.vita.virginia.gov/websitemodernization/

Success Stories

- Agency compliance with accessibility standards increased from 44% to over 88%.

- A Commonwealth Branding Bar was created and deployed to 100% of agency main websites.

- Won StateScoop 50 award for State IT Innovation of the Year 2024.

- Increased VITA's engagement and partnership with Executive and Non-Executive agencies.

VITA Governance and Support

- Web System Standard, first released in February 2023, has been updated to align with ADA Title II Final Rule.

- Monthly training provided on various accessibility and user experience topics.

- On-demand accessibility training with custom certifications for web developers, designers, and content creators.

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Resources Involved

People

- Dedicated Project Manager (converted to full-time program lead)
- Accenture-led project team
- Partnership with various teams (Security / Enterprise Architecture, Web Development / Design, Communications, Change Management / Business Readiness, etc.)

Tools and Vendor Partners

- Siteimprove – accessibility scanning and web traffic monitoring
- Siteimprove Frontier – custom Accessible Virginia training program
- Fusion / JAWS Inspect – screen reader and reporting tools
- State-wide contracts for Content Management Systems, web hosting, and design

⊕ Site target: A | AA

Accessibility score ⑦

Accessibility
87.8 /100
+0.0 ⑦

⌁ View score breakdown →

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Looking Ahead

Title II of the Americans with Disabilities Act (ADA)

- Entities subject to Title II will be required to conform their digital content to the WCAG 2.1 Level AA, a set of guidelines and criteria for making web content more accessible to a wider range of people with disabilities.

- A public entity with a total population of 50,000 or more shall begin complying with this rule **April 24, 2026.**

Operationalizing

- Accessibility, for websites or otherwise, is not a one-time effort!

- Ongoing funding is needed to maintain and expand accessibility tools, so COV doesn't risk backsliding to the baseline from before the resources were available.

- Accessibility needs to be deeply rooted into how each agency does business – from contracting with a third-party to creating content to opening a new local office and training staff.

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Questions

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DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting # 2
Tuesday, August 6, 2024, 10:00 a.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting began with approval of the previous meeting minutes, presentation of SB 492 by Senator William M. Stanley, Jr., public comment on SB 492, Workgroup requested presentations on HB 1355, public comment on HB 1355, and discussion by the Workgroup members. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Robin McVoy (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I.   Call to Order; Remarks by Chair

> *Sandra Gill, Deputy Director*
> **Department of General Services**

Gill called the meeting to order and moved into the second agenda item.

II.   Approval of Meeting Minutes from the July 17, 2024 Workgroup Meeting

Heslinga made a motion to approve the meeting minutes from the July 17, 2024, meeting of the Workgroup. The motion was seconded by Saunders, and unanimously approved by the Workgroup.

III.   **Presentation on SB 492**

Senator Stanley began his remarks by sharing the importance of procurement in Virginia and making sure we always get it right. He stated that SB 492 is a policy decision bill but also makes sure that Virginia makes a statement to its citizens and other states that Virginia will not tolerate, nor accept, products, including cobalt, that are minded in countries where slave labor, child labor, or forced labor is used. He explained that in the Congo, and other countries, cobalt is being mined and some countries mine it responsibility, but other countries do not. Senator Stanley then read a letter from Francois Justin Mukumbilwa and provided photographs reflecting the terrible working conditions of people forced into labor.

Next, Senator Stanley pointed to the movie, Blood Diamonds, and shared that the United States took a stand against unethically mined diamonds, sharing that it is his hope that Virginia will take a stand against unethically mined cobalt. He emphasized the importance of Virginia being responsible when buying products using tax dollars.

Senator Stanley continued his remarks stating that as technologies emerge, the Commonwealth is engaging in purchasing and procuring electric buses, electric cars, and electric vehicles for government workers to operate, which is a policy decision of the Commonwealth. He shared that he does not contest the efficacy of electric cars, and in fact, embraces them and believes that we can determine, through a general inquiry, if the manufacturers of electric vehicles and other products that use cobalt, are doing so ethically and without harm to their children or citizens of their country. He explained that there are many countries that mine cobalt ethically, and that we can identify those countries and then ensure that the companies we purchase from are sourcing from said countries.

He concluded his remarks stating that Virginia will not support cobalt mined unethically and if we can change how we procure products that include cobalt, then we can change our world and convince others to change theirs, ultimately having a positive impact.

IV.   **Public Comment on SB 492**

There were no public comments regarding the bill.

V.   **Workgroup Requested Presentations on HB 1355**

The first presentation to the Workgroup was on website modernization program and accessibility from Josh Jones with the Virginia Information Technologies Agency (VITA). He began his remarks by providing an overview of the website modernization program that began in 2023 with a goal of reviewing all agency websites and striving to make agency websites more secure while improving design and accessibility. He shared that about 44 percent of websites reviewed initially met accessibility standards, adding that over the past year, VITA has provided new training and resources and that agency website compliance has risen to over 88 percent. Jones pointed out that Commonwealth

official websites now contain a branding bar at the top to provide assurance to users that they are on an official Commonwealth website. Jones explained that VITA partnered and worked with both executive and non-executive agencies in these efforts sharing that the monthly trainings are well attended and there are on-demand accessibility trainings available for web developers and designers. He added that this project has required a lot of resources and a massive collaborative effort.

Continuing through the presentation, Jones shared the tools and vendor partners that VITA utilized to ensure a successful program thus far, which included the creation of a custom Accessible Virginia training program. He explained that VITA has many state-wide contracts for content management systems, web hosting, and design, and that VITA is currently working to ensure accessibility is incorporated. Jones emphasized that he is working to ensure entities conform their digital content to the WCAG 2.1 Level AA, which are a set of guidelines and criteria for making web content more accessible to a wider range of people with disabilities. Title II of the Americans with Disabilities Act (ADA) requires that areas with a population of fifty-thousand or more must comply with the standard by April 24, 2026 and areas with a population under fifty-thousand have an additional year to comply. He shared that VITA focused heavily on public websites but wanted to also look at applications and realized that in order to make a web application accessible, generally it needs to be rebuilt. To make a whole new website from scratch – to do a full redesign – can cost anywhere from $50,000 to $250,000. Implementing accessibility one website or application at a time involves large amounts of effort and money. Jones concluded his remarks by sharing that there is more to consider with accessibility and gave examples of individuals coming into a building to fill out a form and being mindful of accessibility in such design and the steps required for a disabled person to complete the task.

Peeks asked Jones if the Title II compliance deadline of April 24, 2026 is a federal deadline to which Jones replied that it is a federal deadline set by the Department of Justice. Peeks then asked if Jones felt there was overall cooperation from entities or hesitation about the costs associated with implementation, to which Jones replied that there has been a lot of cooperation, however, there are concerns about costs and in the past year, VITA covered the costs for agencies which was helpful, but VITA cannot continue to carry the cost without funding to support the efforts. Jones added that many agencies know where they fall short on accessibility, but do not have the resources to do anything about it, sharing that for FY25 he has put in a decision package for website modernization so VITA can continue to support and handle procurements instead of entities having to do individual procurements.

The second presenter was Daniel Aunspach with the Department for the Blind and Vision Impaired. He began his remarks stating that many things he will speak about regarding challenges in procurement have been addressed with the cooperation of VITA, the modernization program, and other partners. Aunspach shared that challenges include accessibility awareness, accessibility tools, methods and practices that continually change to adapt and meet rapidly evolving trends in technology, explaining that it can be difficult to keep up with the pace of change. He stated that vendors, and developers, may have

limited accessibility knowledge or misinterpret conformance specifications, which becomes more complicated when vendors use subcontractors. Aunspach shared that practical usability challenges occur where products may not be practically usable under the performance expectations that are met by peers who do not require accommodations. He said that he has often heard that a particular resource is not for public use, or there are only a few members of the team that will use the resource, none of which have a disability, which leads to the belief that accessibility should not be considered or required for the resource, explaining that this excludes qualified persons with disabilities from the team.

Aunspach continued his remarks stating that by including accessibility through the software lifecycle it improves adoption by everyone and ensures continuity of operation as the workforce changes. He added that by including accessibility throughout all business operations, both internal and external, that ensures success in adapting to planned and unforeseen changes. Aunspach stated that the concept of alternate but equal can be misleading, explaining that by providing an alternate format with equal content is thought to be an appropriate solution, and in some cases is, but this may also preclude the individual from accessing the material with the same proficiency and accuracy as those who have access to the original resource. He gave an example that an original resource in PDF may be reproduced as a simple linear Microsoft Word or text document which requires much more navigational work and interpretation than using a truly accessible PDF which can impede productivity and introduces opportunities for data inaccuracy. He said that this example requires an entity to maintain two separate versions of the same resource which often leads to the official version being updated and the accessible version becoming outdated.

Aunspach shared strategies for overcoming accessibility challenges, such as ongoing training and resources to enable users of accessibility technologies to effectively use accessibility tools. He explained that producers of assistive technology products typically maintain self-service resources for using the accessibility features in their products, and other online resources like W3 schools, webaim, and W3C offer free guidance, resources, and testing tools. He concluded his remarks emphasizing the importance of accessibility being included in the procurement process and throughout software development lifecycles with subjective testing of performance requirements and product testing by end users who rely on accessibility technology tools that can quickly identify areas of improvement and remediation.

Before moving to public comment, Gill shared with the Workgroup that Innocenti is working to secure a presenter from K-12 and that the OAG is planning to present at the next meeting.

Public comments in support of HB 1355.

The first stakeholder to comment was Bonnie O'Day with the National Federation of the Blind of Virginia (NFBV). O'Day began by expressing appreciation for the work the workgroup does. She stated that in terms of HB 1355 she would like to update the language to harmonize with federal law under the ADA, including revising the definition of accessibility and accessibility conformance report to refer the web content accessibility guidelines (WACG) 2.1 level AA. She explained that these revisions would harmonize the ITAA with regulations under Title II of the ADA. O'Day stated that at the last meeting there was confusion between Section 508, 504, ADA, ITAA, and more and wants to eliminate confusion and duplicative efforts for covered entities. She shared that the access requirements need to be consistent with Title II of the ADA regulations and that the DOJ considered using the Section 508 standard, however WACG 2.1 is more recent and adds important criteria for accessibility. She added that by being consistent with federal law, it will streamline processes for covered entities and eliminate confusion and redundancy. O' Day stated that it would be helpful to have a contact person identified for instances where there is a problem with a state website, and that she has encountered more problems with local government and higher education. She concluded her remarks stating that vendors need to document the extent to which they are, or are not, in compliance.

The second stakeholder to speak was Corey Singleton representing Virginia Higher Education Accessibility Partners (VHEAP) which includes state agencies and K-12, in addition to higher education institutions. Singleton shared that there are approximately sixty-eight public higher education institutions in Virginia and about five of those review accessibility as a part of the procurement process. He noted that entities are constantly purchasing and implementing inaccessible technology which impacts employees and students with disabilities, explaining that this goes beyond websites and includes learning management systems. He explained the efforts being made to work around some of these challenges, such as partnering together and figuring out how to better utilize cooperative purchasing agreements for services like captioning transcription, braille, but people still need to understand the importance of accessibility.

Singleton shared that the updates to Title II of the ADA have changed how we need to approach accessibility and while there is a two year timeline to comply, he does not think most entities are in a position to address those needs in that timeframe due to a lack of staffing and resources. He said less than ten higher education institutions have staff dedicated to dealing with assistive technology and/or accessibility and that most state entities are not well resourced or equipped to address what is coming down in the next couple of years. He shared an example of the learning management system, Canvas, and that there are some higher education institutions that already use Canvas, but each institution transitioning to Canvas should not have to duplicate the same efforts over and over, so doing a collaborative approach in procurement and addressing accessibility upfront it will be easier to address accessibility and with vendor transparency about the

accessibility of their product everyone can have a better understanding of the gaps and issues. He stated that he wants to ensure that vendors provide a timeline on how long it will take to make their product accessible and that it is important for institutions to put together an alternative accessibility plan if someone shows up needing access to a tool that is not accessible.

Comments in opposition to HB 1355.

The first stakeholder to speak was Chris Carey with Metis Services Inc, explaining that his company provides risk management services to local governments and schools in Virginia. He stated that he is not opposed to the bill conceptually, explaining that there are 1,000 local governments in Virginia, including K-12 school districts and that updates and new websites are expected to cost between $50,000 and $250,000 each in order to comply over the next thirty-six months. Carey explained that the Title II ADA final ruling that was mentioned earlier requires conformance to that standard for state and local governments, therefore developers are required to develop to that standard and implementing requirements that beyond will increase the cost more. He shared that local governments have been faced with significant increases to staff salaries and still struggle with staff shortages, adding that this will likely be an unfunded mandate which needs to be taken into consideration. He concluded his remarks agreeing that Virginia needs to be in conformance with Title II of the ADA.

The second stakeholder to speak was Tim Wyatt with the Virginia Local Government Information Technology Executives (VaLGITE). He shared that most all of VaLGITE supports the concept of this bill and that the challenge is on the wording and how it will be implemented. Wyatt explained that in his local government there are over three-hundred pieces of software and trying to assess this all with limited resources is not doable in a short amount of time. He concurred with the costs that Carey shared and stressed that each locality uses different programs.

The third stakeholder to speak was JT Kessler with the Virginia School Boards Association. Kessler echoed the comments of previous two speakers emphasizing the concerns around cost and implementation. He added that he does not see a need for Virginia to implement requirements beyond those the federal government require at this time. Kessler stated that schools are required to comply with serving the needs of students through 504 plan or IEP.

The fourth stakeholder to speak was Jeremy Bennett representing the Virginia Association of Counties (VACo). Bennett stated that they are not opposed to the intent of the bill but have concerns regarding implementation and the potential for unfunded mandates for local governments. He encouraged members to look at fiscal impact from session on the bill stating that the fiscal impact will be anywhere from thousands to millions of dollars for local governments.

Peeks asked Bennett and the other presenters who spoke in opposition, if they have recommendations on how to accommodate the costs of implementation, adding that a

response right now is not required, but asked that input be provided on how to make this feasible. Carey responded that the minimum cost for a website is between $50,000 and $250,000, and that everyone will have to incur these costs to be compliant with the standard and the fear is that Virginia will add additional requirements on top of the Title II of the ADA requirements, making it even more complicated and expensive. Carey added that schools do not receive money to implement these new requirements and suggested that Virginia conform to Title II of the ADA and once those changes are implemented, Virginia can determine if there are any gaps that need to be addressed.

Saunders addressed the fiscal impact issued during session, stating that the new federal standard was finalized after session and we need to take into account the cost to public bodies for implementing the new standards. He asked for an explanation of which sections of HB 1355 would be in excess of the new federal standards and what those additional costs would be?

The fifth stakeholder to speak was Scott Brabrand, the Executive Director for the Virginia Association of School Superintendents and represents superintendents across 132 school divisions across Virginia. Brabrand shared the following potential solutions to the Workgroup; (i) Virginia Department of Education (VDOE) could post a list of vendors that are in compliance and signal to school divisions which vendors and software are already meeting the standards, (ii) address unfunded mandates by focusing first on funding to implement the existing federal regulation requirements then once implemented identify if there are gaps in what Virginia needs that are not addressed in the federal regulations and allow time to implement with appropriate funding, and (iii) ask JLARC to do an assessment around digital accessibility and help layout a roadmap for school divisions to meet these requirements.

The sixth stakeholder to speak was Josette Bulova with the Virginia Municipal League (VML) and echoed previous comments regarding cost and implementation for equipment, employees, potential litigation, specifically for smaller localities with budgets smaller than the cost of new equipment.

The seventh stakeholder to speak was Jennifer Van Ee with Fairfax County. Van Ee echoed prior comments sharing that Fairfax County is already in compliance with Title II. She explained that this effort has been a priority and the county has invested a lot of money into this effort. Van Ee stated that there are three levels of compliance and this bill would push everyone to meet the highest level which will cost a lot of money and go beyond the current ADA compliance requirements. She noted the broad language in the bill and the challenge to know exactly how to implement and exactly what all will be impacted. She stated, for example, would the bill apply to an internal accounting software, or just public facing software, it's not clear. She concluded her remarks offering potential solutions such as, better defining what this would apply to and to first being the law into compliance with the federal standards before Virginia implements standards beyond those.

VII. Discussion

Saunders stated that he would like to know what happens for entities that are not in compliance with Title II of the ADA by the deadline of April 2026, asking if there are penalties in place or if it only results in potential lawsuits from those with unmet needs.

Saunders also asked, regarding VITA's presentation, for an explanation of what counts as digital content? Public facing websites, applications, other things?

The above questions will be answered at the next meeting.

VIII. Adjournment

Gill adjourned the meeting at 11:18 a.m. and noted that the Workgroup's next meeting is scheduled for August 21, 2024 at 10:00 p.m.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix D: August 21, 2024, Meeting Materials

This appendix contains the meeting materials from the August 21, 2024, Workgroup meeting.
1. Agenda
2. Meeting Materials
    a. Accessibility Procurement Workgroup Staff Outreach
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

Meeting # 3
Tuesday, August 21, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Approval of Meeting Minutes from the August 6, 2024 Workgroup Meeting**

III. **Presentation on HB 1404**
   Gwendolyn S. Davis, M/WBE Administrator Procurement Office
   Portsmouth Public Schools

IV. **Public Comment on HB 1404**

V. **Presentations on HB 1355**
   Nathan Moberley
   Office of the Attorney General

VI. **Public Comment on HB 1355**

VII. **Discussion on HB 1355, Preliminary Findings and Recommendations**

VIII. **Public Comment on SB 492**

IX. **Discussion on SB 492**

X. **Discussion**

XI. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff
Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS
Kimberly Freiberger, Legislative Analyst, DGS

IT Accessibility

Responder	State	Reply
Marie Cohan Statewide Digital Accessibility Program Administrator, PMP, CSM, CPACC, BRMP, DIR marie.cohan@dir.texas.gov (512)463-6186	Texas	Yes, several states have laws or executive orders for digital accessibility. Colorado, Minnesota, Maryland, Massachusetts, Pennsylvania, and others have mature programs. In Texas we have statute that aligns with ADA and Section 508 and regulations. • Texas Government Code 2054 Subchapter M • Texas Administrative Code 206 – Websites • Texas Administrative Code 213 – Electronic and Information Resources We also have a statewide digital accessibility program that works closely with our state agencies, universities, and vendor partners to ensure Texas technology is accessible. There is a national group with a representative from (almost) each state. It's the Multi-State Digital Accessibility Collaborative and we meet once a month. You can request access by emailing Henry Quintal in the state of Maine (Henry.J.Quintal@Maine.gov). Lastly, NASCIO has a Digital Accessibility forum: NASCIO-digitalaccessibility@ConnectedCommunity.org.
Jay Wyant Chief Information Accessibility Officer | Office of Accessibility mn.gov/mnit 651-201-1001	Minnesota	As Marie noted, we do have some laws and processes in place. Here's a quick synopsis: · 2009: Legislature (16E.09, subd 9) requires State CIO to set a state standard that includes, at minimum, Section 508 and Web Content Accessibility Guidelines 2.0, Level AA. · 2010: Original draft of Standard published, effective September 1, 2010. · 2011: Legislature appropriates funds for Chief Information Accessibility Officer and Office of Accessibility. · 2018: Section 508 refresh goes into effect, adding WCAG 2.0. · 2024: July 1, MN Digital Accessibility Standard updates to include WCAG 2.1, Level AA (version 4.0) General information: Minnesota Office of Accessibility website.
Mike Scott Chief Information Accessibility Officer	Illinois	Beth, in Illinois we've had a state law called the Illinois Information Technology Accessibility Act (IITAA) since 2007. The law itself (https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2918)

Illinois Department of Innovation & Technology Mike.Scott@Illinois@gov DoIT.Illinois.gov		is brief and points to standards (https://doit.illinois.gov/initiatives/accessibility/iitaa/iitaa-2-1-standards.html) that we can update without having to change the legislation. Our standards were originally a blending of WCAG 1.0 and Section 508, but when the Access Board refreshed the 508 Standards in 2017, we updated our standards to match 508 almost exactly. With the recent DOJ ruling on ADA Title II, we just updated the standards to reference WCAG 2.1 Level AA in place of WCAG 2.0. I also participate in the Multi-State Digital Accessibility Collaborative and would recommend it highly.
Marcy Jacobs Chief Digital Experience Officer Deputy Secretary Department of Information Technology marcy.jacobs@maryland.gov (667)644-1859 (M)	Maryland	Maryland has several laws in place regarding digital accessibility, including the Non-Visual Access (NVA) Clause, MD Code §3.5-311, which is based on Section 508 and aligned closely with WCAG 2.0 success criteria. In January, Governor Wes Moore in conjunction with Department of IT Secretary Katie Savage announced the state's first comprehensive digital accessibility policy which created governance around accessibility that did not previously exist. The policy included moving to WCAG 2.1 Success Criteria which is a higher standard than the NVA (WCAG 2.0). It also mandates appointing accessibility officers for each state agency and formalizes our office and external agency responsibilities as it relates to digital accessibility. Our approach to complying with the updated ADA Title II final rule brings together state-wide guidance, inter-agency cooperation, the vendor community, and the disability community and their advocates. The Office of Accessibility, established in the summer of 2024 and housed within the Maryland Digital Service, addresses the executive branch's accessibility needs and is staffed to improve the accessibility of the state's digital footprint. The Director of the Office of Accessibility leads the charge to build a workforce with the tools and expertise to create accessible digital experiences. The Accessibility Officer Initiative, a potential first of its kind in the nation, brings together a secretary-appointed Accessibility Officer from each cabinet-level agency's secretary across the state. These officers serve as a network across Maryland's government to aid with ADA compliance and the improvement of the respective agencies' websites and

		applications. We launched weekly open office hours to provide state employees with direct access to the accessibility team to discuss any accessibility-related questions or concerns. We are in the midst of procuring an automated testing solution to provide a snapshot of the state's executive branch websites and aid with targeted manual testing efforts. Procurement modernization including revising the state procurement template with enhanced accessibility language and the addition of formal checks and balances significantly leveling up the accessibility requirements. Working with state agencies, we have formalized interagency accessibility efforts via an MOU covering topics including (but not limited to) testing, training, consultation, and procurement. Later this month, our inaugural accessibility CoP will start across the state government with numerous stakeholders that will further the discussion of making changes to make the state's websites and apps more accessible to our constituents. This community of practice will be meeting on a monthly basis. Working with the vendor community, we have Initiated a vendor digital accessibility compliance effort, allowing state IT vendors to self-report the accessibility of the solutions they are developing for the state and then go through an interactive compliance process. Engagement with community stakeholders in the disability community including national advocacy groups with recurring meetings to discuss our efforts, listen to their feedback, and engage with our community.
Kate Michener Director of User Experience New Hampshire Department of Information Technology (603)271-8193	New Hampshire	New Hampshire has an IT Accessibility Policy that was originally written to comply with Section 508. It was updated with the new rule to include WCAG 2.1. The User Experience Division manages all Executive Branch websites. We have a unified web platform that was initiated in 2019 and we have migrated about 60% of agency websites (roughly 80% in traffic volume) to the new platform. The platform is so successful that we have voluntary participation from the Judicial Branch and Secretary of State. It uses a statewide site template that was created with accessibility in mind so our current focus is on completing the migration and educating content creators on how to create accessible documents. We also recently procured a website governance tool that includes accessibility scans for pages and documents. Agencies will eventually have access

		to a dashboard for their site(s) and we can also send reports to agencies. Like a few others have mentioned, I also participate in the Multi-State Digital Accessibility Collaborative and it is a great resource!
Lainie Strange OA Web Accessibility Coordinator DESE/DHEWD Web Developer	Missouri	Missouri has had an accessibility law since 1999, referencing Section 508. We have had a companion accessibility standard document since 2003, with periodic updates. Since our law doesn't specifically call out a specific version of WCAG, we make those changes to our standard document, currently at WCAG 2.0. We are planning to update our standard document to WCAG 2.1 later this year, with a six month window to come into compliance with 2.1. We are also writing into our standard document that we will update to the latest WCAG standard two years after each publication date. (for example, we will move to 2.2 October 2025) Currently we have informal accessibility points of contact at each agency. The MO Dept of Ed. did hire someone specifically to handle accessibility this Summer, so hopefully we will see more of this, especially in light of Title II. In my role as Web Accessibility Coordinator I work with Missouri Assistive Technology on training, standards document updates as well as administrator of Siteimprove, which we've used since 2019. I work with executive branch agencies (and assist non-executive as needed). We plan to further develop our training information for agency content creators and application developers in the coming year.
Kelly Tabor Communications Manager, Technology Accessibility Program Kelly.tabor@state.co.us	Colorado	Colorado passed House Bill 21-1110 which makes it a state civil rights violation for a government agency to exclude people with disabilities from receiving services or benefits because of lack of accessibility. We have a website link to basics about HB21-1110, a summary, impacts to public entities, and helpful links to get organizations started with accessibility compliance. Additionally, Colorado passed Senate Bill 23-244. SB23-244 Technology Accessibility Cleanup clarifies statutory language adopted in HB21-1110 to ensure the provision of reasonable accommodations for persons with disabilities. It

		also required the Colorado Governor's Office of Information Technology (OIT) to undertake a rulemaking process to promulgate rules for accessibility standards for IT systems employed by state agencies. Many Colorado state agencies have hired accessibility staff including coordinators, web specialists, project managers, etc. since HB21-1110 was passed and since the Rules were adopted. Final Rules Adopted Feb 23, 2024 Plain Language Guide to the Rules Additionally, our team has created loads of resources to assist state and local governments with their accessibility planning and implementation. Guide to Accessible Web Services
Tricia Cox Deputy Division Director triciac@utah.gov	Utah	The State of Utah's Digital Experience Team released the Utah Design System (UDS) in July of 2023 and it will continually be updated to incorporate best practices. The UDS consists of reusable user interface components, valuable resources, and guiding principles that empower teams to craft consistent, accessible, secure, and scalable user experiences for websites and applications. The UDS was purposely built to conform to the WCAG 2.1 standards (state statute, and in anticipation of federal government adoption). We have made the UDS available to all of our state agencies and departments. For your reference, here is a link to the UDS: https://designsystem.utah.gov/ With the exception of the copyrights surrounding our State of Utah artifacts, we welcome any state to adopt our design system. In the spirit of collaboration, we invite you all to please benefit from our efforts! If you have any questions please feel free to reach out to Robert Wallis at rwallis@utah.gov.

APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 3
Wednesday, August 21, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, presentation on HB 1404 by Gwendolyn S. Davis, public comment on HB 1404, Workgroup requested presentations on HB 1355, public comment on HB 1355, discussion of preliminary findings and recommendations on HB 1355, public comment and discussion on SB 492, and discussion by the Workgroup members. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Leslie Haley (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the August 21, 2024 Workgroup Meeting

Heslinga made a motion to approve the meeting minutes from the August 21, 2024, meeting of the Workgroup. The motion was seconded by Love, and unanimously approved by the Workgroup.

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III.   Presentation on HB 1404

Gwendolyn Davis, M/WBE Administrator with the Portsmouth Public Schools presented HB 1404 to the Workgroup and asked for support of the bill in its current form, stating that she requested the bill. Davis explained that Senator Louise Lucas requested the first disparity study in 1997 and provided two handouts while informing the Workgroup that HB 1404 codifies executive orders that have been issued, noting the first executive order was issued in 2014 by Governor McAuliffe. Davis stated that with the executive orders, DGS and other agencies stepped up and the numbers went up for women and minority spend from $75 million to $3.1 billion spend.

Davis explained that the bill creates the small business procurement enhancement program within the Department of Small Business and Supplier Diversity (DSBSD). She stated that in 2004 MWBE's received only 1.26% of spend and the 2020 disparity study reported that spend should be at 32% instead of 11%, adding that the issue has been studied so much and now they want to see action. Davis explained that during the pandemic business owners in the 757 were impacted and have not recovered so the General Assembly needs to act, stating that the numbers don't lie. She explained that the disparity study is good for about five years and needs to be redone to determine progress.

Davis stated that the bill has been vetted by many administrations and the Office of the Attorney General for years and it is one of the best pieces of legislation, sharing that the numbers are not aspirational, that they are concrete, which is needed to make progress in Virginia. Davis shared that business owners have told her that they had to leave the state because they are not getting the help that they need. She shared that she believes the 42% is achievable. Davis continued her remarks pointing out that the bill assures prompt payment which is important because a lot of business owners say it takes 90-100 days before they receive payment. The bill also addresses the set asides for WM businesses up to 100K for the purchase of all goods, services, and construction but does not include transportation because that has not been studied. Davis stated that the bill requires subcontracting plans, sharing that in procurement when verifying a subcontracting plan a lot of times subcontractors do not know that their names are included on the plan, so that's why the plan is important. The bill allows local governments to establish purchase procedures that don't require competition for a single term contract. Lastly, the bill requires DSBSD to conduct a disparity study every five years because that's the only way we will know if we are doing business with all qualified businesses available.

IV.   Public Comment on HB 1404

Public comments in support of HB 1404.

The first stakeholder to comment was Tonya Poindexter of the Northern Virginia Black Chamber of Commerce. Poindexter said that she wants to ensure that her members receive the resources they need and many members say that they go through the procurement process for state contracts and are unable to get through the process and unable to achieve their goals of getting a state contract. She concluded her remarks

expressing support for this bill as it stands and says it will help her members achieve their goals of getting state contracts.

The second stakeholder to comment was Samuel Wiggins, the CEO of Virginia Minority Chambers. Wiggins shared his support for the bill and explained that when a minority business applies for a state contract and sees that their SWaM certification has been reduced to bonus points, that is disheartening. He shared that prior experience is asked for in procurements and if you don't have prior state experience then it drives you to the private sector or federal government because they have better programs.

The third stakeholder to comment was Loranna Justine who expressed support for the bill.

Public comments in opposition.

The first stakeholder to comment was Chris Stone, past chairman for the Hampton Roads Chamber of Commerce. Stone said that they are not against the bill but have concerns about two aspects. The first concern is about codifying the 42%, explaining that executive orders are flexible, and codifying will remove the flexibility requiring the General Assembly to make any adjustments. The second concern is the definition of small business, sharing that the definition has not been updated since 1960 and no one knows where it came from. Stone said the way the definition is written, it allows companies to have up to 250 employees with unlimited revenue while still being classified as a small business. Stone shared that in 2018 DSBSD conducted a study with the Virginia Commonwealth University (VCU) and concluded that the definition of what a small business needs to be updated and made consistent with today's business environment. He shared that in 2020 JLARC conducted a study recommending that the small business definition be changed as well and pointed to page 63 of the report. He concluded his remarks stating that the current definition does not help small businesses and asked for consideration on amending the small business definition.

The second stakeholder to comment was Melissa Ball, a member of the Small Business Commission and a local small business owner. Ball said she supports initiatives that promote and help level the playing field for minority owned, women owned, and small businesses allowing them to participate in the procurement process, adding that it is very important to health of Virginia's economy. Ball stated that the addition of the micro business definition did the opposite of what it was intended to do; by codifying the micro business definition, it removed many of the small businesses from the process and implements a one size fits all approach that only looks at businesses headcount. Ball said that small businesses that are transactional were impacted by the micro business definition, sharing that her business was impacted by the micro business definition which caused her company to be placed the same category as Staples. She added that micro businesses contact her to purchase products from her company then the micro business sells to the Commonwealth, which results in the Commonwealth paying double or triple the cost of the item. Ball shared other commodities that this occurs with, such as police safety items, wildlife trail cams, tools, and maintenance supplies. She concluded her

remarks by agreeing with Davis that the federal government has a lot to offer on this subject and that we should consider the SBA approach to size and numbers for small businesses.

V. Presentations on HB 1355

The Workgroup received a presentation from Nathan Moberley of the Office of the Attorney General (OAG). Moberley shared that the primary concern is ambiguity with respect to the definition of accessibility. He explained that the bill defines accessibility as alignment with federal Section 508 Standards and Section 255 Guidelines adopted pursuant to 29 U.S.C. § 794d and 47 U.S.C. § 255. Moberley explained that the two statutes implement two different standards to accommodate disabilities and both are potentially in conflict with one another and referencing both could make it difficult for covered entities to interpret the standards that apply to them. *(Moberley provided his comments in writing after the meeting. They are available on the PWG website.)*

VI. Public Comment on HB 1355

Public comments in support of HB 1355.

The first stakeholder to comment was Barbara Sunder with the University of Virginia (UVA), representing VHEAP. Sunder shared with the Workgroup that she works with students with disabilities daily, and supports HB 1355. She stated that everyone will be impacted by the Title II ADA update and shared that the bill does two things that Title II does not. First, it addresses outdated state code that has not kept up with the changing technology world. Second, it provides structure and outlines a plan for how public entities can begin the uphill battle towards compliance. She explained that Title II sets the mandate but falls short on providing concrete guidance on how to achieve these goals. HB 1355 gives public entities a framework and allows pushback to vendors who fall short on accessibility.

The second stakeholder to comment was Teri Morgan with the Virginia Board for People with Disabilities. Morgan expressed support for HB 1355, adding that the new ADA rules go into effect April 2026 which gives the opportunity to create a framework for agencies and organizations to demonstrate that Virginia understands the importance of accessibility for all.

The third stakeholder to comment was Ann Flippin with the Autism Society of Central Virginia. Flippin shared that there are gaps and expressed the importance of the bill for their community and ensure that Virginia has accessible technology for all.

There were no comments in opposition, in part support/in part opposition, or neutral.

Discussion on HB 1355, Preliminary Findings and Recommendations

The Workgroup began discussion on the information received regarding HB 1355. Saunders commented that a recommendation could be made to conform the state law to Title II of the ADA requirements for now, and after the implementation of Title II of the ADA in April 2026, the General Assembly can determine if additional changes are needed to Virginia's accessibility standards. Innocenti and Gill both expressed support for the recommendation. Peeks requested that the recommendation include the same entities that are required to adhere to the Title II of the ADA.

Innocenti stated that when bringing the state into compliance with the federal requirements, it would be helpful to determine the priority of compliance and if first the outward facing systems and applications should be addressed. Peeks sought clarification as to whether or not outward facing systems would include systems used by students, to which Innocenti confirmed that students would be included. Gill asked if the federal government defines outward facing systems or if that is a definition that would be new.

Gill asked the Workgroup to consider a recommendation to change the reporting requirements, which currently requires reporting to the Secretary of Administration (SOA), because stakeholders have indicated that the reporting is not being done. She recommended that reporting go to the General Assembly instead of the SOA and that the reporting requirements be expanded to include noncompliant websites and fiscal impact to obtain compliance. Heslinga added that expanding the reporting in that way will make it more impactful as the current reporting pertains only to instances where the accessibility clause is excluded. Dulaney asked who would be responsible for the reporting, to which Gill responded with an example for consideration that SCHEV could report for Higher Education, DOE for local public schools, etc. Saunders replied that it would be good to have an entity be responsible for facilitating the reporting instead of having each covered entity submit individual reports.

Innocenti recommended that lines 131-141 of the bill should be removed to not incorporate consequences as the procurement process provides the Commonwealth the authority to address any nonperformance issues that may arise. Peeks clarified that it is not being removed entirely as it exists elsewhere, it's being removed because the procurement process allows contractors to be held responsible, and, if in breach of contract, the Commonwealth can debar.

Heslinga recommended that the parts of the bill that designate an accessibility coordinator and the grievance procedure be addressed. He shared that most organizations have a designated person to handle ADA matters, and in the engrossed bill, it is not specific about making the accessibility coordinator contact information easily available and is permissive about designating an accessibility coordinator, then on lines 183 a grievance procedure is incorporated. Heslinga stated that the accessibility coordinator information should be easy to identify and readily available, however the surrounding language regarding the grievance procedure should be removed. Tweedy added that it

would be helpful to clarify that when contacting the accessibility coordinator that the barrier to accessibility be provided.

Peeks added that once the general alignment with the federal regulations is made, it would be helpful to know the additional requirements in the bill that do not align with the federal requirements.

Innocenti pointed out to the Workgroup that OAG identified issues with the bill using acquisition and procurement interchangeably and the Workgroup may wish to address that.

Gill did a review of the recommendations the Workgroup offered and directed staff to compile into formal recommendations for review at the next meeting.

VIII. **Public Comment on SB 492**

No public comment.

IX. **Discussion on SB 492**

Gill asked the Workgroup if there is any additional information needed to help facilitate the discussion to develop preliminary recommendations for SB 492. Hearing none, Heslinga shared his understanding of the bill, explaining the desire to ensure that child labor and oppressive labor are not used in the production process for electric vehicles. Heslinga stated that there are also other areas in which child labor or oppressive labor may be used, so it should be a policy decision on narrowing it to electric vehicles or applying to all. Gill confirmed his understanding and pointed to existing terms and conditions utilized through the procurement process, such as the drug free workplace term and condition, as an example for ensuring contractors are not using child labor or oppressed labor. Gill directed staff to compile this into a formal recommendation for review at the next meeting.

X. **Discussion**

No additional discussion.

XI. **Adjournment**

Gill adjourned the meeting at 2:00 p.m. and noted that the Workgroup's next meeting is scheduled for September 4, 2024 at 10:00 a.m.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix E: September 4, 2024, Meeting Materials

This appendix contains the meeting materials from the September 4, 2024, Workgroup meeting.
1. Agenda
2. Meeting Materials
    a. Draft Recommendations HB 1355
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

<u>Meeting # 4</u>
Wednesday, September 4, 2024, 10:00 a.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Approval of Meeting Minutes from the August 21, 2024 Workgroup Meeting**

III. **Presentation on HB 1524**
The Honorable Alfonso H. Lopez
House of Delegates

IV. **Public Comment on HB 1524**

V. **Public Comment on Draft Recommendations on HB 1355**

VI. **Finalize Recommendations on HB 1355**

VII. **Public Comment on Draft Recommendations on SB 492**

VIII. **Finalize Recommendations on SB 492**

IX. **Public Comment on HB 1404**

X. **Discussion on HB 1404**

XI. **Discussion**

XII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General   House Appropriations Committee
Senate Finance Committee   Division of Legislative Services

Staff
Killeen Wells, Deputy Director of Communications
Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS
Kimberly Freiberger, Legislative Analyst, DGS

Public Body Procurement Workgroup

Draft Recommendations for HB 1355

Recommendation 1:

The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with Title II of the Americans with Disabilities Act (ADA) for all covered entities and that, after the federal deadline of April 2026 to comply with the federal standards, then the General Assembly should determine if additional requirements should be added to the Code.

Recommendation 2:

The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to add public schools to the definition of covered entity.

Recommendation 3:

The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to prioritize outward facing systems and applications

Recommendation 4:

The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expanding the reporting requirements by covered entities on non-accessible technology to include: (i) identifying non-accessible technology, and (ii) estimating the fiscal impact to bring such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agency, such information on an annual basis to, and that agency report to the General Assembly, rather than to the Secretary of Administration. (like Local Public Schools to the Department of Education)

Recommendation 5:

The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require that covered entities publish in a clear, easily accessible, area on its website who should be contacted when an accessibility barrier is identified.

Recommendation 6:

The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include (i) grievance procedure language (like that found in lines 183-89 of the engrossed version of HB1355), because other applicable federal and state laws already provide procedures for remedies, or (ii) specific contractual penalty or consequence language (like that found in lines 133-41 of the engrossed version of HB3155), because public bodies already have the authority to address noncompliance with law or with contract provisions.

Public Body Procurement Workgroup

Draft Recommendations for SB 492

Recommendation 1:

The Workgroup recommends that the General Assembly consider amending Chapter 43 of Title 2.2 to explicitly prohibit the use of forced labor and oppressive child labor by requiring that public bodies include in public contracts a provision requiring contractors to agree that the contractor and its subcontractors and suppliers shall not employ or use forced labor or oppressive child labor in the performance of their obligations under the contract.

APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 4
Wednesday, September 4, 2024, 10:00 a.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, presentation on HB 1524 by Delegate Alfonso H. Lopez, public comment on HB 1524, public comment on draft recommendations for HB1355, and public comment and finalization of draft recommendations for SB 492. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Leslie Allen (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the August 21, 2024, Workgroup Meeting

Heslinga made a motion to approve the meeting minutes from the August 21, 2024, meeting of the Workgroup. The motion was seconded, and unanimously approved by the Workgroup.

III. Presentation on HB 1524

The Honorable Delegate Alfonso H. Lopez presented HB 1524 to the Workgroup. He began by giving some background, stating that in 1990 SB 101 enacted a tax credit for recycling equipment purchased for fixed facilities. That code was updated in 2015 to state that due to the move towards more economically and sustainable asphalt paving techniques used on the roadway, this expensive equipment was not eligible for tax credits under the current code. Lopez said he introduced HB 1524 during the 2024 Session to create a tax credit for such machinery to alleviate this issue. He explained that the issue goes beyond the machinery to the large stockpiles of Recycled Asphalt Pavement (RAP). Lopez explained these stockpiles keep growing, even though they could be used in asphalt mixes to make a quality product. Lopez said he requested the Workgroup and DEQ to work in conjunction to study his bill ahead and to expand the study to look at all of the challenges associated with using higher levels of RAP.

Lopez then described the issue in more detail, stating that as of August 2024, Virginia contractors have an excess of 5 million tons of RAP stockpiled at facilities. The most concentrated amount is in northern Virginia with 1.9 million tons. Fredericksburg has 358,000 tons, Richmond has 810,000, Hampton Roads has 612,000. He continued, saying that the recycling machinery in question aids in creating what is know as cold mix or CM asphalt, which is combined through a process that does not use heat. These CM mixes (called CIR and CCPR) are more sustainable than conventional mixes because they use fewer carbon emissions and allow for 100% use of RAP.

Lopez explained the limitations of using RAP—cost of machinery, availability of RAP, which is concentrated in mostly urban areas, and Virginia Department of Transportation (VDOT) project requirements. Lopez said VDOT does not allow for the use of CIR or CCPR on most construction/reconstruction projects.

In summary Lopez highlighted the problems: there are big stockpiles of RAP across the commonwealth; there are a lack of VDOT projects allowing the use of RAP in the form of cold mixes, which is inhibiting; and landfills across Virginia do not accept RAP due to the potential for burning. He then proposed some solutions to consider. He suggested new construction, reconstruction and rehabilitation projects must be bid with the option for a base mix asphalt produced at a conventional plant or a cold plant recycling (CCPR) and for rehabilitation and corrective maintenance, projects must be bid with the option for convenient deep mill or with cold in-place recycling (CIR). Lopez furthered there would be a cost savings for contractors and VDOT's procurement process. He also touched on environment benefits due to the reduced need for virgin materials, decreasing the carbon footprint, and the environmental benefit of reduced need for transporting materials to and from a project site.

Lopez pointed out the I-81 southbound project, stating that three sections of that project used recycled material, and it showed a 50%-70% energy reduction and a 40%-70% reductions of global warming potential when compared to conventional pavement. He said the I-64 project showed a 25%-40% energy reduction and a 15%- 40% reduction in global warming potential.

Lopez stated in Virginia we allow 30% to 35% RAP, and Virginia is using 27.8%, but there are a number of other states including Maryland, West Virginia, Tennessee, North Carolina, and Florida, that are allowing higher percentages like 40% in Florida and Georgia. He said Virginia could be catching up to these other states and taking advantage of the benefits. He briefly touched on how there were a significant number of international projects that were taking advantage as well in China, Japan and India.

Lopez said he has been in conversations with different environmental groups to flag issues, but they have not come up with any. He said that he has researched it himself and that the general consensus is that it is safe. The net emissions are less depending on how long the recycled road lasts. He divulged that there was less information on runoff. However, he said, several studies looked at using it unbound as gravel and that it is generally safe. He explained the Federal Highway Administration and most sources think in-place recycling is safe environmentally with possible upside of decreased carbon emissions, having been used since the 1970s. Lopez said he did not find during his research that the leaching of contaminants was a concern, and in fact most studies said that the runoff dissipates in the soil.

Lopez finished his presentation by posing a question; "what it comes down to is do we think it is beneficial enough for a tax credit or some other modification of the legislation from last year." He addressed the Workgroup saying he wants their help in determining what are the things that are not being thought about that should be.

IV. **Public Comment on HB 1524**

Below are the public comments in support of HB 1524.

The first stakeholder to comment was Trenton Clark, president of the Virginia Asphalt Association who was in support of the bill. Clark said that he and the association had been working with Delegate Lopez since last year to bring forth this bill. He explained that Virginia Asphalt Association is the nonprofit trade association for Virginia's paving industry, with over 130 members and over $3 billion in business a year. He underscored that the reason for this legislation is because the original bills only applied to fixed facilities. He went further saying while we do a lot of advanced recycling, none of that equipment is eligible for a tax credit because it has to be at a fixed facility. Clark said as Virginia is moving forward with a cleaner economy, in-place recycling will be a key part of that because it saves on money and has environmental savings through mixing on site, not having to transport it and the process of not having to use heat. Clark said that the Virginia Asphalt Association has been working with VDOT and the Virginia Transportation Research Council for a decade to increase the amount of RAP in mixes by doing thorough research and pilot projects to make sure a quality product can be provided. He further commented that contractors are drowning in RAP in the urban crescent, and that this bill will address that by letting the asphalt community increase the amount of RAP used in mixes. He said the bill will help Virginia move forward with quality, economical and environmentally friendly mixes.

The second stakeholder to comment was Buzz Powell, a retired professor from Auburn University with a long-standing research relationship with VDOT and technical director of the Asphalt Pavement Alliance. He was in support of the bill. Powell ran the NCAT Test Track at Auburn University which encompasses two thirds of U.S. states. They studied asphalt mixes that were composed of half recycled asphalt with positive results. That research led to many states allowing more recycled milling in their hot mix. Powell stressed that the key to the mix is the glue that binds it all together. He explained that in his research they tested a 30% VDOT mix to a 45% RAP version of that same mix with equivalent performance. From the southeast to as far north as Minnesota, the recycled mixes had positive performance results. He went on to say that there is potential to reduce carbon and cost by a third by using these techniques.

The third stakeholder to comment was Paul Tarsovich, the CEO and executive vice president of Slurry Pavers, who expressed support for the bill. He emphasized that using special recycling equipment increases efficiency and helps the environment. Tarsovich said that this bill is about being good stewards of the planet. He also touched on the economic benefits, explaining there would be more equipment purchases, more employees, more roads at a cheaper cost and a better use of tax dollars. He finished by urging the workgroup to support the bill because it will reduce waste, reduce the use of urgent materials, and it will provide a great product for the commonwealth.

The fourth stakeholder to comment was David Horton with Virginia Paving Company. He expressed that he was in support of HB 1524 because his company operates in Virginia urban areas (Hampton Roads, Fredericksburg and northern Virginia) and they have a substantial amount of RAP. He said it is a valuable product that ends up getting wasted and that we should be putting it back in the roadways. He further stated that his company is pressured and also wants to decrease their carbon footprint and that this bill would help them achieve those goals.

The fifth stakeholder to comment was Gordon Dixon with the Virginia Transportation Construction Alliance who expressed support of the bill as written. He emphasized the amount of research available and the need to have the right people at the table helping to guide and make decisions for this bill. He applauded VDOT for being one the leading users of RAP across the country.

There were no comments in opposition, in part support/in part opposition, or neutral.

V.   Public Comment on Draft Recommendations on HB 1355

There were no public comments in support, opposition, in part support, in part opposition or neutral to HB 1355.

VI.   Finalize Recommendations on HB 1355

Gill announced that Delegate Tran reached out to the Workgroup and asked that the Workgroup abstain from voting on finalizing the bill today, as Delegate Tran was not able to be in attendance. Gill said the Workgroup will finalize the recommendations and take vote at the next meeting.

Jessica Hendrickson, who is on the Workgroup staff, then read the draft Recommendation 1 of HB 1355 aloud to the Workgroup: "The Workgroup recommends that General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with Title 2 of the American with Disabilities Act for all covered entities and that after the federal deadline of April 2026 to comply with the federal standards then the General Assembly should determine if additional requirements should be added to the code."

Saunders stated the regulations that have come out from the Department of Justice came through the federal registrar and are not specifically from Tittle 2. He then asked if the Workgroup needed to reference the CFR in the recommendation so that the bill is in compliance with the most recent regulations. Gill concurred.

Heslinga asked if the Workgroup wanted to reference specific regulations or if the Workgroup should use less specific language such as "in compliance with applicable law, including Title 2 of the American Disabilities Act and associated regulations."

Gill concurred but said they will come back to this point once the Legislative Services member returns.

Hendrickson read Recommendation 2, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of 2.2 to add public schools to the definition of public entity."

Saunders asked a clarifying question of if the DOJ regulations include school divisions under those regulations as a covered entity. When hearing yes, he asked for confirmation that the Workgroup's recommendation would be consistent with amending state statute as we set in Recommendation 1." Gill replied that he was correct.

Hendrickson then read Recommendation 3, "The Workgroup recommends that General Assembly consider amending Chapter 35 of Title 2.2 to prioritize outward facing systems and applications."

Heslinga poised a question to Workgroup Chair Gill, asking if the recommendation should be more general and about guidance rather than a specific amendment to the statute because he does not think anyone is questioning that the biggest impacts would be prioritized first. He continued that consistency with federal law is important and asked if the Workgroup were to add a prioritization that is not consistent with federal law if that introduced an inconsistency. He suggested the recommendation say, "The General Assembly charge stakeholder agencies with providing guidance about how to prioritize systems and applications."

Peaks seconded Heslinga's suggested change, adding that it could be the General Assembly's preference and that she liked the idea of a creation of a policy.

Dulaney asked if the Workgroup should consider any type of an exemption or under $10,000 threshold for prioritizing in Recommendation 3.

Saunders asked if the federal law requires a dollar threshold.

Gill said that she did not think there was a threshold in the federal law and said she did not think they should include one in this recommendation but deferred to the Workgroup.

Heslinga suggested that a dollar amount could be dealt with in a policy.

Tweedy added that it could clarify in the recommendation that the policies would be consistent with federal law and regulations.

Gill pivoted, asking Shultz, with the Division of Legislative Services, to opine on Recommendation 1, asking if it would be appropriate for the recommendation to say not just being in compliance with Title 2 of the American Disabilities Act, but also including the Code of Federal Regulations and the Federal Rehabilitation Act as appropriate. Shultz confirmed that would be acceptable.

Hendrickson read Recommendation 4, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expand the reporting requirements by covered entities on non accessible technology to include 1. identifying non accessible technology, and 2. estimating the fiscal impact of bringing such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agencies such information on an annual basis and that agencies report to the General Assembly rather than the Secretary of Administration. And it provides an example of local public schools to the Department of Education."

There were no comments to Recommendation 4.

Hendrickson read Recommendation 5, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require that covered entities publish in a clear, easily accessible area on their website who should be contacted when an accessibility barrier is identified.

Peaks asked if it were possible to have a policy where agencies were required to respond or have a process to respond to the contact. She shared drafted language for the

recommendation, "And that agencies develop an internal process to expediently seek remedy to the identified concern."

Gill said it would be incorporated into the recommendation.

Hendrickson then read Recommendation 6, "The Workgroup recommends that when amending Chapter 35 Title 2.2, the General Assembly not include the following the grievance procedure language which is found in lines 183 to 189 that is found in the engrossed version of the bill because other federal and state laws already provide procedures for remedies or 2, specific contractual penalty or consequence language like found in lines 133-141 of the engrossed bill because public bodies already have the authority to address noncompliance with law or with contract provisions."

Heslinga asked the Workgroup if procedurally that recommendation should be separated into two recommendations. The Workgroup agreed to draft them into two recommendations.

VII. Public Comment on Draft Recommendations on SB 492

There were no public comments in support, opposition, in part support, in part opposition or neutral to SB 492.

VIII. Finalize Recommendations on SB 492

Hendrickson read the Recommendation 1 for SB 492, "The Workgroup recommends that the General Assembly consider amending Chapter 43 of Title 2.2 explicitly prohibit the use of forced labor and oppressive child labor by requiring that public bodies include in public contracts a provision requiring contractors to agree that the contractor and its subcontractors and suppliers shall not employ or use forced labor or oppressive child labor in the performance of their obligations under the contract."

Innocenti asked if the qualifier "oppressive" needed to be included. Gill said that it could stay in, and the General Assembly could make the decision to include it or not. Shultz agreed.

Heslinga brought to the Workgroup's attention if a $10,000 threshold should be included as part of this recommendation. Gill asked if instead of a dollar threshold, would it be appropriate to include language "in every written solicitation."

Dulaney pointed out that this is currently included in the general terms and conditions on any state contract.

Shultz added that the Workgroup needs to consider what level of knowledge for which the contractors should be responsible. She suggested language of "no known child labor."

Staff amended the Recommendation 1 to include Shultz's language. The final recommendation read as follows: "The Workgroup recommends that the General Assembly consider amending Chapter 43 of Title 2.2 to explicitly prohibit the use of forced labor and oppressive child labor by requiring that public bodies include in public contracts a provision requiring contractorscertify that the contractor and its subcontractors and suppliers have no knowledge of the use of forced labor or oppressive child labor in the performance of their obligations under the contract."

The Workgroup voted in support of SB 492, 7-0.

IX.   Public Comment on HB 1404

There were no public comments in support, opposition, in part support, in part opposition or neutral to SB 1404.

X.   Discussion on HB 1404

Gill asked the Workgroup members what additional information would be helpful as the group moves into final recommendations for the bill.

Dulaney asked for data on the percentage of SWAM spend per agency over the last 10 years, as well as data on the micro-certification, specifically how many micro businesses have lost certifications due to exceeding the defined threshold since that category was defined in 2014. She also asked for data on the SWAM population and numbers of micro and small businesses.

Heslinga expressed interest in the 2020 JLARC report recommendations and how many of those recommendations have been incorporated into law or are reflected in this bill or are outstanding.

Dulaney asked for a presentation on the current workflow of the small/micro business certification process.

Gill asked for the Department of Small Business and Supplier Diversity and staff to research the definitions of small business.

XI.   Discussion

No additional discussion.

XII.   Adjournment

Gill adjourned the meeting at 11:13 a.m. and noted that the Workgroup's next meeting is scheduled for September 17, 2024, at 1:00 p.m.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix F: September 17, 2024, Meeting Materials

This appendix contains the meeting materials from the September 17, 2024, Workgroup meeting.
1. Agenda
2. Meeting Materials
   a. Final Recommendations HB 1355
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

Meeting # 5
Tuesday, September 17, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Approval of Meeting Minutes from the September 4, 2024, Workgroup Meeting**

III. **Public Comment on HB1355**

IV. **Finalize Recommendations on HB 1355**

V. **Presentation on HB 1524**
Brandon Bull, Director of Division of Policy
Department of Environmental Quality

VI. **Presentation on HB 1524**
Michael Fitch, Ph.D., Director, Virginia Transportation Research Council
Virginia Department of Transportation

VII. **Public Comment on HB 1524**

VIII. **Discussion on HB 1524**

IX. **Presentation on HB 1404**
Verniece Love, Deputy Director
Department of Small Business and Supplier Diversity

X. **Public Comment on 1404**

XI. **Discussion on HB 1404**

XII. **Discussion**

XIII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency

Department of Small Business and Supplier Diversity
Virginia Department of Transportation

Department of Planning and Budget   Virginia Association of Government Purchasing
Virginia Association of State Colleges and
University Purchasing Professionals

Representatives

Office of the Attorney General   House Appropriations Committee
Senate Finance Committee   Division of Legislative Services

Staff

Killeen Wells, Deputy Director of Communications, DGS
Kimberly Freiberger, Legislative Analyst, DGS

Public Body Procurement Workgroup

Final Draft Recommendations for HB 1355

Recommendation 1:

The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with Title II of the Americans with Disabilities Act (ADA), the Code of Federal Regulations and the Federal Rehabilitation Act as appropriate for all covered entities and that, after the federal deadline of April 2026 to comply with the federal standards, then the General Assembly should determine if additional requirements should be added to the Code.

Recommendation 2:

The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to add public schools to the definition of covered entity.

Recommendation 3:

The Workgroup recommends that the General Assembly charge stakeholder agencies with providing guidance on how to prioritize systems and applications.

Recommendation 4:

The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expanding the reporting requirements by covered entities on non-accessible technology to include: (i) identifying non-accessible technology, and (ii) estimating the fiscal impact to bring such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agency, such information on an annual basis to, and that agency report to the General Assembly, rather than to the Secretary of Administration. (like Local Public Schools to the Department of Education)

Recommendation 5:

The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require that covered entities publish in a clear, easily accessible, area on its website who should be contacted when an accessibility barrier is identified and that agencies are required to develop procedures to review the identified concern and respond to individual(s) submitting the concern.

Recommendation 6:

The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include grievance procedure language (like that found in lines 183-89 of the engrossed version of HB1355), because other applicable federal and state laws already provide procedures for remedies.

Recommendation 7:

The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include specific contractual penalty or consequence language (like that found in lines 133-41 of the

engrossed version of HB3155), because public bodies already have the authority to address noncompliance with law or with contract provisions.

DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting # 5
Wednesday, September 17, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, public comment from the Honorable Delegate Kathy Tran on HB 1355, followed by the Workgroup voting in support of finalizing the seven recommendations to HB 1355, presentations by Virginia Department of Transportation (VDOT) and Virginia Department of Environmental Quality (DEQ) on HB 1524, public comment on HB 1524, discussion on HB 1524, a presentation by Virginia Department of Small Business and Supplier Diversity (DSBSD) on HB 1404 and discussion on HB 1404. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Michael Jay (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Leslie Allen (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I.   Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II.   Approval of Meeting Minutes from the September 4, 2024, Workgroup Meeting

Saunders made a motion to approve the meeting minutes from the September 17, 2024, meeting of the Workgroup. The motion was seconded, and unanimously approved by the Workgroup.

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III.	**Public Comment on HB 1355**

The Honorable Delegate Kathy Tran spoke to her patron bill, HB 1355. She expressed her sincere appreciation to the Workgroup for the time and attention they have given HB 1355 and emphasized the importance of increasing access to government services and educational programs to all Virginia citizens. She stated she believes the recommendations the Workgroup have made will help make progress for individuals with disabilities, working towards the day when every Virginian is able to access resources and services available to them.

She then shared thoughts on the Workgroup's drafted recommendations. She said on Recommendation 1, the new WCAG version 2.1AA was not released until after the 2024 Legislative Session adjourned, so she very much appreciated the time that the Workgroup took to assess those new federal regulations and how they will affect Virginia. She stated that she agreed with the Workgroup that the new ADA Title 2 standards should be incorporated as well.

On Recommendation 2, she thanked the Workgroup for specifically recommending that the General Assembly add local school districts as a covered entity, because, she said, it will help ensure students with disabilities are able to fully participate in their classrooms. She added it will reduce the time teachers have to devote to making separate lesson plans for children with disabilities.

For Recommendation 6, Tran said she accepted it but focused her attention to the inclusion of Recommendation 5, which she said is important, as well as a feedback loop so that the public and covered entities can work together to address inaccessible technologies that remain. Tran added that Recommendation 5 would augment that collaboration.

Tran mentioned an Accessibility Conformance Report that was not in the Workgroup's recommendations, saying she hopes the General Assembly and the Workgroup will recognize this report is integral to the bill because it gives a roadmap to compliance.

Lastly, she suggested that higher education entities be included in the same implementation timeline as state governments. She said in her conversations with higher education, they relayed that's the timeline they were looking at nationally as well. She then thanked the Workgroup once more for their efforts.

IV.	**Finalize Recommendations on HB 1355**

Gill asked Workgroup staff member Killeen Wells to read each recommendation aloud, after which the Workgroup would vote on each recommendation.

Wells read Recommendation 1 of HB 1355 aloud to the Workgroup: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with the Americans with Disabilities Act (ADA), the Code of Federal Regulations and the Federal Rehabilitation Act as appropriate for all covered entities and that, after the federal deadline of April 2026 to comply with the federal standards, then the General Assembly should determine if additional requirements should be added to the Code." The Workgroup voted in support of Recommendation 1 of HB 1355, 7-0.

Wells read Recommendation 2 of HB 1355 aloud: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to add public schools to the definition of covered entity." The Workgroup voted in support of Recommendation 2 of HB 1355, 7-0.

Wells read Recommendation 3 of HB 1355 aloud: "The Workgroup recommends that the General Assembly charge stakeholder agencies with providing guidance on how to prioritize systems and applications." The Workgroup voted in support of Recommendation 3, 6-0, with DPB abstaining.

Wells read Recommendation 4 of HB 1355 aloud: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expanding the reporting requirements by covered entities on non-accessible technology to include: (i) identifying non-accessible technology, and (ii) estimating the fiscal impact to bring such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agency, such information on an annual basis to, and that agency report to the General Assembly, rather than to the Secretary of Administration. (like Local Public Schools to the Department of Education)." Allen commented that there is an extra "to" in this language that was not in the minutes. Wells struck the "to" and the comma following. The Workgroup voted in support of Recommendation 4, 6-0, with DPB abstaining.

Wells read Recommendation 5 of HB 1355 aloud: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require that covered entities publish in a clear, easily accessible area on its website who should be contacted when an accessibility barrier is identified and that agencies are required to develop procedures to review the identified concern and respond to individual(s) submitting the concern." The Workgroup voted in support of Recommendation 5, 7-0.

Wells read Recommendation 6 of HB 1355 aloud: "The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include grievance procedure language (like that found in lines 183-189 of the engrossed version of HB 1355), because other applicable federal and state laws already provide procedures for remedies." Heslinga suggested, to align with Delegate Tran's comments, that the following language be added to the end of this recommendation: "and this is addressed in Recommendation 5." The final wording for Recommendation 6 was read as follows: The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include grievance procedure language (like that found in lines 183-189 of

the engrossed version of HB 1355), because other applicable federal and state laws already provide procedures for remedies, and this is addressed by Recommendation 5." The Workgroup voted in support of Recommendation 6, 6-0, with DPB abstaining.

Wells read Recommendation 7 of HB 1355 as follows: "The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include specific contractual penalty or consequence language like that found in lines 133-141 of the engrossed version of HB 1355 because public bodies already have the authority to address noncompliance with law or with contract provisions." The Workgroup voted in support of Recommendation 7, 6-0, with DPB abstaining.

V.   Presentation on HB 1524

Brandon Bull, the director of the Division of Policy at the Virginia Department of Environmental Quality presented on HB 1524. He stated that DEQ has no position on the bill since it is an executive branch agency, but said he was pleased to share some technical observations and feedback with the Workgroup.

Bull referenced Speaker Don Scott's letter asking the Workgroup, in consultation with DEQ, to look at HB 1524 and look at six specific questions. Bull said three of those questions are beyond the scope of DEQ's purview, but his presentation focuses on the other three questions.

He then listed the questions from Speaker Scott's letter, the first of which pertained to avenues to provide funding via tax credits/incentives to expedite the acquisition of asphalt recycling machinery and equipment on project sites by contractors. The fourth question was about the environmental impacts of increased Recycled Asphalt Pavement (RAP) percentages, and the sixth question was about the use of repurposed waste material, such as tires, in asphalt.

Bull addressed question one by explaining that DEQ is involved in existing programs that provide tax credits or tax-exempt status to encourage the use of recycling or using pollution control equipment. He talked about four programs that DEQ thought might be helpful in generating ideas about what to consider when looking at HB 1524. He said DEQ administers an income tax credit for recycling equipment, and that HB 1524 was modeled after this program. This existing program is pursuant to section 58.1-439.7 of the Code of Virginia, and it provides, "an income tax credit for the purchase of machinery or equipment used predominantly in or on the premises of manufacturing facilities or plant units which manufacture, process, compound or produce items of tangible personal property from recyclable materials within the commonwealth and for machinery and equipment used predominantly in or on the premises of facilities that are predominantly engaged in advanced recycling." Bull furthered that this existing exemption is focused on machinery and equipment that is located on site at the facilities, so it does not include the mobile equipment talked about in HB 1524. This income tax credit can be claimed by either an individual or corporate income tax and is set at 20% of

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the original total capitalized cost. Bull said DEQ's role in administering the program is to certify that the equipment is being used for what it is claimed.

The second program Bull talked about is a property tax exemption for recycling equipment facilities and devices. He said this program is pursuant to section 58.1-3661 of the Code of Virginia. In this program, local governments have the option to partially or fully exempt DEQ certified recycling facilities and equipment from property taxes. Bull explained that again, this exemption is focused on things at a fixed location. DEQ administers this program through a form to apply for certification, and once certified, then depending on their locality they could qualify for a local tax exemption, explained Bull.

The third program Bull mentioned is a tax credit for waste motor oil burning equipment. Pursuant to section 58.1-439.10 of the Code of Virginia, the tax credit is for 50% of the purchase price paid for equipment used exclusively for burning waste motor oil at a facility that accepts waste motor oil from the public. Bull went on to explain that unlike the other tax credit program he had mentioned, this credit must be used in the year the purchase was made. DEQ once again certifies that the equipment qualifies for the tax credit.

The fourth program that Bull shared with the Workgroup is a tax exemption for pollution control equipment in facilities. Pursuant to section 58.1-3660 of the Code of Virginia, pollution control equipment is a separate class of property and is exempt from state and local taxation and retail sales and use taxes also do not apply, he said.

He summarized DEQ administers four existing programs, some are for tax credits, and some are for tax exemptions, and in all of the programs, DEQ's role is to certify the equipment meets the definition or eligibility.

Bull then turned to Speaker Scott's fourth question in the letter about the environmental impacts of increased RAP percentages. He said he understands that much of the discussion at the previous Workgroup meeting was about increasing percentages of RAP. He went on to say that doing this would decrease the amount of RAP that is stockpiled throughout the commonwealth and put it to beneficial use. Bull said that without more information, DEQ could not quantify how much RAP would be reduced. He continued that based on DEQ's understanding of what is proposed, it would eliminate the need to transport RAP back to a plant, which would in turn reduce emissions. However, he said DEQ could not quantify that based on the information they have now. He addressed the discussion at the last meeting about using less heat to mix the RAP, saying again that less heat would lead to less energy and that would lead to environmental benefits, but without more detailed information, DEQ is not prepared to quantify that either.

He then turned to question six from Speaker Scott's letter, and stated DEQ currently manages a tire waste user reimbursement program. The purpose of the program, Bull said, is to provide incentives in the form of direct payments to people who beneficially reuse waste tires. He further stated that the program does include reimbursement for

making a product such as rubberized asphalt using waste tires. Bull explained that the number of waste tires generated in the Commonwealth of Virginia per year is about 6.5 million, using data from the past five years. And of that number, 5.9 million have been reused over the past five years; however, that data is skewed. From the past two years, which is more accurate data, Virginia has been reusing only 3.8 million of the 6.5 million waste tires. So, there is a waste tire issue in the Commonwealth of Virginia, he concluded.

There were no questions, and with that Bull concluded his presentation.

VI.   Presentation on HB 1524

The Workgroup then turned their attention to the next presentation on HB 1524. Dr. Michael Fitch, the director of Virginia Department of Transportation's Research Council, began his presentation stating he would not speak directly to the language in HB 1524, but he said he would address several points in the Speaker's letter regarding the bill.

Fitch presented four takeaway points:
- VDOT is a national leader in the use of high RAP.
- VDOT is a national leader in RAP research.
- VDOT is leading a study quantifying the environmental impacts of high RAP pavement.
- VDOT is evaluating the use of other recycled material (ground tire rubber, recycled plastics.)

Fitch spent some time on VDOT's current use of RAP. There are three different layers in the asphalt structure that are measured for RAP. For pavement year 2022, the average usage was 29% for the top layer (maximum possible was 30%), 29% for the second layer (maximum was 30%) and 33% for the bottom layer (maximum was 35%). So VDOT was just under the maximum amount they could use. To put it in perspective, Fitch said that the national average was at 22%, and VDOT was well above that percentage in usage. Fitch then showed where Virginia fell as far as usage between states.

According to VDOT data, the commonwealth came in fourth in terms of total RAP usage for 2022. The three states in front of Virginia were Florida, Idaho and Georgia. Fitch noted that VDOT is cautious to make changes to the RAP mix percentages because Virginia is the third largest state DOT in the country. The other two larger—North Carolina and Texas—have lower RAP usage than Virginia. Fitch divulged that VDOT spends $800 million a year in pavement maintenance, so the implications are large.

Fitch moved on to his next point explaining how VDOT is a leader in RAP research. He said VDOT has completed 25 recycling reports, and it has implemented 27 recommendations from those reports. Fitch continued that VDOT researchers have authored over 40 journal articles and received numerous grants for the continued research of recycling.

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Fitch made a point to distinguish the difference between in-place RAP and mixing RAP at a fixed facility. He said they have done research on in-place recycling and those results have been positive, but they need to be separated out from the results of fixed facility recycling.

Fitch said there are 12 sites where VDOT is researching high RAP content (above 30%) for durability and performance. Three of those sites were paved in 2013/2014, and the rest were paved in 2019/2020. They expect to complete most of the research in 2026. He finished this point saying that to use higher percentages of RAP, VDOT must have developed a specification based on the performance of the mix.

Fitch touched on environmental impacts of RAP stating that there are significant environmental benefits. He added that it is not as clear what the benefits of a high RAP at a fixed facility would be due to the transportation involved. VDOT has received a national grant to begin documenting the environmental benefits from 30% RAP, said Fitch, and the reason VDOT was given that grant is because this information is not widely known. He said VDOT has put in for another federal grant where, if they received it, they could start benchmarking data on even higher percentages of RAP. He stressed the importance of the longevity of the higher RAP material, so as not to take away from the environmental benefits.

The last subject Fitch touched on was the use of other waste products (ground tire rubber and recycled plastics). VDOT is monitoring ground tire rubber in asphalt. Fitch said it is an expensive and difficult process, and so they are looking at a dry process that would be less expensive. VDOT has also recently put down test areas of recycled plastics and are monitoring those as an additive to asphalt pavement.

Fitch ended by saying VDOT is pushing the envelope in research and is leading a national study to quantify the impacts of high RAP.

Gill questioned if the 12 research sites were for in-place RAP or all happening at a facility. Fitch responded that they were all from a facility. He made the distinction that VDOT does have over 400 miles of in-place recycling projects that they have put down and are monitoring as well. Gill then asked when the results from the climate grant are due. Fitch said he believed in 2026. Heslinga asked for confirmation that VDOT is researching the ask for higher RAP and is doing so under agreed upon timelines and will have more data soon. Fitch confirmed that was correct.

VII.   Public Comment on HB 1524

Charles Craddock, vice president of Superior Paving Central Division and president of the Old Dominion Highway Contractors Association, spoke in support of HB 1524. He said that incentives given to companies for equipment purchases for recycling would be well received. He continued that Virginia is behind the times in the percentages of RAP allowed in asphalt mixes. He stressed the research done by NCAT showed that increased

percentages of RAP in asphalt mixes can be done without reducing the quality of the product. He went on to say that his company put down higher percentage RAP mixes for testing at Virginia Tech and that both the 40% RAP mix and the 60% RAP mix have performed well. He said the Old Dominion Highway Contractors Association openly welcomes a partnership with VDOT and other regulating agencies to do what is right for the taxpayer and most importantly for the environment.

Trenton Clarke, president of the Virginia Asphalt Association, spoke in support of HB 1524. He said that the Virginia percentage of RAP is pretty much in line with North Carolina. He said last week that six contractors were asked by VDOT about running 40-50% RAP, and he said the contractors had some concerns about the specification because it is different from what we have been working with. It will be a company-by-company basis on how they move forward. He said he applauds VDOT reaching out. He stressed that companies need the assurance that there will be continued need for higher RAP to invest in the time and equipment to produce it. Clarke said that the Virginia Asphalt Association is interested in both the monetary and environmental savings related to this bill. He said it was time to implement based on what we know, which has been studied for the past two decades.

No one spoke in opposition or took a neutral stance to the bill. This concluded public comment for HB 1524.

VIII.   Discussion on HB 1524

Gill asked if there was any additional information that the Workgroup would like staff to gather for the next meeting in relation to HB 1524. The staff will talk about potential recommendations at the next meeting, she said.

Mike Tweedy noted the existing similar tax credit and asked if the Workgroup could get further details from the Virginia Department of Tax on if that credit was fully utilized.

IX.   Presentation on HB 1404

Verniece Love, deputy director of the Department of Small Business and Supplier Diversity, presented on HB 1404. Love gave a quick overview of SBSD, including its mission to help small businesses start and grow in Virginia.

She then responded to a question asked in the last meeting, saying that as of June 30, 2024, over 14,000 businesses were certified SWAM businesses. She added that it is important to note that businesses can be certified in multiple categories, so the numbers may overlap, and the total number of businesses will not match exactly. She delved further, explaining that of those SWAM businesses, a little over 13,000 are small businesses, just over 8,000 are certified micro-businesses, just over 6,200 are minority-

owned businesses, approximately 5,600 women-owned businesses, 3,300 disadvantaged business enterprises and 810 service disabled, veteran-owned businesses.

Love then walked the Workgroup through the DSBSD electronic certification portal for businesses, which was launched in 2017. The processing time can take up to 60 business days she said, and the certification is valid for five years. Recertification is a streamlined process where previous business documentation is saved for ease of recertification.

She then talked about the three disparity studies that have been done—in 2002, 2009 and 2020. DSBSD currently has an RFP out in eVA for another disparity study which will be completed in 2026. The three disparity studies show an increase in women and minority-owned businesses with only 1.27% percent of businesses falling into this category in the 2002 study, 2.82% in the 2009 study and 13.3% in the 2020 study.

Love gave an analysis of the dollar amounts spent, showing that in FY2023, the Commonwealth of Virginia spent over $2.9 billion with SWAM businesses. Of that $2.9 billion, she said, approximately 6.06% was spent with women-owned businesses and 6.77% was spent with minority-owned businesses. She drew attention to the chart that showed over the past three years, the spend with SWAM businesses has increased.

Next, Love provided information about the 42% goal, in which she is referring to the goal for the Commonwealth of Virginia to spend 42% of total annual spending with SWAM businesses that was increased from 40% in 2014 by Governor McAuliffe. In the past 10 years, the closest the Commonwealth of Virginia has gotten to the goal occurred in 2016, at 36.9%, and in 2015 at 36.42%. The other years, the percentage has fluctuated around the low 30th percentile range.

Love mentioned that she provided a copy of the JLARC study recommendations and pointed out DSBSD's response to recommendation four of that study, saying that the agency pointed out that it is hard for agencies to meet the 42% goal, based on contracting and spend. She said DSBSD recommended the SWAM goal be based on each specific agency based on each agency's spend and contracting habits, rather than an overall goal for the commonwealth.

Love relayed the small business definition as defined in the Code of Virginia: " 'Small business' means a business that is at least 51 percent independently owned and controlled by one or more individuals, or in the case of a cooperative association organized pursuant to Chapter 3 of Title 13.1, as a nonstock corporation, is at least 51 percent independently controlled by one or more members, who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees or average annual gross receipts of $10 million or less averaged over the previous three years. One or more of the individual owners or members shall control both the management and daily business operations of the small business."

Love noted that the current definition is an "either or" situation, allowing for multi-million-dollar businesses to be certified as small businesses because they have less than

250 employees. She noted that every year since she has been doing the work (since 2010) there has been a bill introduced to change the small business definition, but it has not happened yet. She highlighted a few past recommendations, including changing the "or" in the small business definition to an "and" which would require businesses to meet the gross receipts limit and the employee limit in order to qualify. She divulged another recommendation has been to go with the federal definition as defined by the Small Business Administration, but she said the SBA definition is industry-specific and is based on federal contracting. She urged that this might not be the best definition for Virginia to adopt because it is not Virginia-specific. Lastly, she said, the federal definition goes by a different set of codes than the ones used in Virginia. In the JLARC study it was recommended that Virginia research and come up with industry-specific limits, explained Love.

In conclusion, Love shared that DSBSD/VSBFA have implemented 15 of the 16 JLARC recommendations. The only one that has not been implemented is Recommendation 5, which is based on a website called Business One Stop. The point of that website was for a business to be able to go to it and register for every procurement, license, set up tax accounts, and all the things they need to do to operate in one place online. In order to set up that website system, it would cost $1.2 million up front and another $4.7 million over four years for maintenance and license renewals. So, it was deemed to expensive to do this recommendation and the website now has information on where to go for businesses.

Love asked if there were any questions. Heslinga said that the JLARC 2020 study talked about there being substantial variation in agency ability to make SWAM purchases based on the goods and services, and in the bill the General Assembly passed this past Session, it seems to respond to that by saying the disparity study currently being conducted by DSBSD evaluate the differences between categories of goods and services. He asked if any prior disparity studies went that in-depth about the differentiation of categories of goods and services. Love responded, no, that the prior studies have simply looked at the availability of SWAM vendors and the amount of state contracting.

Gill asked if Love could clarify that the results of the disparity study being done now won't be complete until 2026. Love said that is correct, the study will begin January 1, 2025, with the report being due January 1, 2026.

Gill followed up, stressing the confusion associated with the goal. She said she thinks there has been confusion for years as to whether it is a Commonwealth of Virginia goal or an agency goal. And she asked if this bill was silent to addressing that and asked if it may create some confusion to that point. Love agreed.

Gill asked Love if she could gather information on what other states are doing, if they have industry-specific limitations like Maryland or how they are handling it. She asked specifically for bordering states. Love said of course she could present that information at the next meeting. Love added that it was also important to note that there are some states that have certification reciprocity, for example, in the Code of Virginia we have a clause that prohibits businesses from certain states that do not allow Virginia businesses to

participate in their program from participating in the Virginia program. She used D.C. as an example because those businesses are not allowed to participate in the Virginia SWAM program because their program does not allow Virginia businesses to participate. And we do this, she explained, because we don't want to put Virginia businesses at a disadvantage.

Dulaney asked if the SWAM goal vs. actual numbers included all spend for all agencies across the state, and clarified by asking who is included. Love responded that yes, it is an aggregate number for all spend of all executive branch agencies across the Commonwealth of Virginia.

X.   Public Comment on HB 1404

There was no public comment in support or opposition of HB 1404.

Chris Stone, the past chair for the Hampton Roads Chamber of Commerce, spoke in general terms about HB 1404. He brought a study to share with the Workgroup that was done in 2018 by DSBSD and VCU and a synopsis of the JLARC recommendations. He pointed out where in the study one could find information on the small business definition and said that the study also covered what other states were doing. He stated that the study says that Virginia is way out of alignment with our neighboring states on the definition of small business, especially as it pertains to the size of a business. He concluded by saying he would like to get the definition more aligned with the current business climate because, "the question before you is why would a company of 250 people and unlimited revenue need special consideration for public procurement?"

XI.   Discussion on HB 1404

Gill asked if there was any additional discussion or any additional information the Workgroup members would like to see at the next meeting regarding HB 1404. She said that JLARC will be presenting at the next meeting, and she will ask them to speak to Appendix F in their report when they present.

Love followed up saying she has the VCU study in the electronic format and she would be happy to send that around electronically to the Workgroup. Gill thanked her and said that would be appreciated.

XII.   Discussion

No additional discussion.

XIII.   Adjournment

Gill adjourned the meeting at 2:27 p.m. and noted that the Workgroup's next meeting is scheduled for October 8, 2024, at 1:00 p.m.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.